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Gov. Code, § 6103

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

PICO NEIGHBORHOOD ASSOCIATION; and MARIA LOYA, Plaintiffs, v. CITY OF SANTA MONICA, Defendant.	CASE NO. BC616804 **DEFENDANT CITY OF SANTA MONICA'S OBJECTIONS TO PLAINTIFFS' PROPOSED STATEMENT OF DECISION** Complaint Filed: April 12, 2016 Trial Date: August 1, 2018 *Assigned to Judge Yvette Palazuelos* *Dep't 28*

Defendant City of Santa Monica submits the following objections to plaintiffs' proposed statement of decision (PSOD) under Code of Civil Procedure section 634 and rule 3.1590(g) of the California Rules of Court.

The City submits these objections to (i) avoid any claim of waiver on appeal; (ii) address any ambiguity or factual error in the PSOD, and (iii) raise omitted principal controverted issues that the City previously requested that the Court address in its PSOD.

I. Introduction

Santa Monica is a small, progressive community whose voting population is approximately 13% Latino. For more than a century, the City has used an at-large method to elect its City Council. The community has repeatedly affirmed its choice of the at-large method because it permits all Santa Monica voters to vote for seven City Councilmembers on a two-year cycle (rather than voting only for one City Councilmember every four years); it makes all seven City Council members accountable to all voters, not just those of a particular neighborhood, increasing the incentives for Councilmembers to work together on issues of concern to the City as a whole; and it avoids drawing district lines with the potential to pit neighborhood against neighborhood, encouraging legislative deal-making to serve the interests of individual districts rather than the City as a whole.

Plaintiffs' PSOD would order the City to discard this system and replace it with district-based elections using a seven-district map that has never been the subject of the public hearing process mandated by Elections Code section 10010. Neither the evidence presented at trial nor plaintiffs' PSOD supports such an order.

First, contrary to plaintiffs' claim that voting is "racially polarized" in Santa Monica, the evidence shows that white voters in Santa Monica regularly join with Latino voters in numbers sufficient to elect Latino voters' candidates of choice. Between 2002 and 2016, candidates preferred by Latino voters won at least 70% of the time in Santa Monica City Council races and over 80% of the time in at-large elections for the SMMUSD, Community College, and Rent Control Boards that plaintiffs claimed involved "racially polarized" voting. Under the at-large system, Latinos have held at least one out of seven (14%) of the City Council seats since 2012 and currently hold four out of 19 (21%) of the

City's other at-large elected positions on the Rent Control, SMMUSD, and Community College Boards. Indeed, at the time this lawsuit was filed, the City had a Mexican-American Mayor.

Second, plaintiffs' PSOD fails to demonstrate that a move to districts would generate better outcomes for Santa Monica's Latino voters. It is impossible to draw a district in Santa Monica with a voting population that is more than 30 percent Latino—far from a majority—and no court adjudicating a vote-dilution claim has ever ordered the creation of districts where the citizen-voting-age population of the relevant minority group in the purported remedial district would be this low. For good reason. In Santa Monica, approximately two-thirds of Latinos live outside plaintiffs' proposed Pico district. In a seven-district system, most of these Latino voters would be isolated in districts with overwhelmingly white majorities and would be prevented from organizing together across neighborhoods, as they can in the current at-large system. And plaintiffs do not dispute that district-based elections would dilute the voting strength of African-Americans and Asians in Santa Monica.

Because there is no evidence establishing either that voting is "racially polarized" or that Santa Monica's at-large election system has resulted in any dilution of Latino voting power, there is no basis for finding a violation of either the California Voting Rights Act or California's Equal Protection Clause.

Third, plaintiffs' PSOD attempts to make out a claim of "intentional discrimination" but fails in this regard as well. In 1946, the transformation of the City's electoral system benefited minority voters and garnered the vocal support of leaders of color within the community. With respect to the 1992 Charter Review Commission proceedings, plaintiffs' claim rests on a single statement by a single Councilmember that plaintiffs have cherry-picked from lengthy recordings of proceedings and then strained to misinterpret. Although the Charter Review Commission generally agreed that the City should adopt a new electoral system, its members could not unite behind a single choice, and expressed concerns about the drawbacks of all options considered, including districts. As for the Councilmember who is plaintiffs' focus, he himself was in favor of adopting a new method of election, but expressed concern about the parochialism inherent in any districted system. Plaintiffs twist his concern about

ensuring that the City maintain its commitment to affordable housing into a public declaration of discriminatory intent.

Fourth, plaintiffs' PSOD disregards the democratic process required by California's Election Code for drawing district lines. Plaintiffs' proposed seven-district map was created by their hired expert with input from at most a few hand-selected community members who were not Latino and had political interests well outside the bounds of this lawsuit. That map has never been the subject of the public hearing process mandated by Elections Code section 10010.

For all these reasons, adopting plaintiffs' PSOD would disregard the facts and law to invalidly usurp the voters' right to choose how their representatives are elected. And it would itself violate the federal and state Constitutions, mandating a change to district-based elections for race-based reasons without any compelling justification. This Court should seize on the last opportunity it has to avoid these errors, reject plaintiffs' PSOD, reverse its tentative decision, and leave in place the voters' repeated choice of the at-large election method, which violates neither the CVRA nor the Equal Protection Clause.[1]

II. Principal Controverted Issues not Resolved by the PSOD

In response to the Court's tentative decision, dated November 8, 2018, the City filed a request for a statement of decision on November 15, 2018, and requested that the Court resolve in that statement various principal controverted issues. (Code Civ. Proc., § 632; Rules of Court, rule 3.1590(d).) The City filed a supplemental request for a statement of decision on December 12, 2018, in response to the Court's first amended tentative decision, and requested that the Court resolve in its forthcoming statement additional principal controverted issues.

Plaintiffs' PSOD does not resolve, or even address, most of the principal controverted issues raised in the City's two requests for a statement of decision. Below, the City addresses each issue raised in its request and notes whether it was addressed or resolved, correctly or incorrectly, by the PSOD. In the interest of efficiency, the City reserves for its line-by-line objections below any detailed

[1] To that end, attached as Exhibit A is the proposed verdict form that the City submitted along with its closing briefing, filled out to conform to the evidence adduced at trial and the applicable law.

explanation as to why plaintiffs' proposed resolution of many key issues is incorrect.

1. ***What are the elements of a claim under the California Voting Rights Act (CVRA)?***

    a. Addressed, albeit erroneously, in the PSOD. Plaintiffs erroneously contend that the CVRA requires only the operation of an at-large electoral system and a showing of racially polarized voting, as they incorrectly define that term.

2. ***What must a CVRA plaintiff prove in order to show racially polarized voting? Must such a plaintiff satisfy the second and third preconditions from* Thornburg v. Gingles *(1986) 478 U.S. 30, 51, namely: (2) "the minority group must be able to show that it is politically cohesive," and (3) "the minority must be able to demonstrate that the white majority votes sufficiently as a bloc to enable it—in the absence of special circumstances, such as the minority candidate running unopposed [citation]—usually to defeat the minority's preferred candidate"?***

    a. Addressed by the PSOD. The parties agree that a plaintiff must satisfy the second and third *Gingles* preconditions. As discussed below, however, the parties disagree as to what those preconditions require.

3. ***Which City Council elections did the Court consider? What is the Court's rationale for considering those elections and not others?***

    a. Addressed, albeit erroneously, by the PSOD. Plaintiffs incorrectly contend that the Court should consider only those elections in which a Latino or Latino-surnamed candidate ran. Plaintiffs also incorrectly apply their own standard, disregarding at least the 2014 City Council election in which Zoe Muntaner, a Latina with a Latina surname, was a candidate.

4. ***Did the Court give some City Council elections more weight than others? If so, which elections, and why?***

    a. Partially addressed, albeit erroneously, by the PSOD. Plaintiffs incorrectly would give no weight at all to elections in which no Latino or Latino-surnamed candidate ran. Plaintiffs also incorrectly do not appear to give different weights

to elections in which Latino or Latino-surnamed candidates did run (e.g., by giving more weight to more recent elections, or less weight to elections filed after the lawsuit, as the CVRA requires), and do not explain their failure to do so.

5. How did the Court determine which candidates were preferred by the voters of the relevant minority group (here, Latinos)?

a. ***Must a candidate be Latino in order to be preferred by Latino voters, or is it the status of the candidate as the chosen representative of Latino voters, rather than the race of the candidate, that is relevant?***

i. Addressed, albeit erroneously and ambiguously, by the PSOD. Plaintiffs incorrectly appear to suggest that only Latino or Latino-surnamed candidates can be preferred by such voters. (They pay lip service to the contrary notion, which is deeply embedded in the relevant federal case law, but their analysis does not allow for the possibility that a non-Latino might have been a preferred candidate of Latino voters in any election.)

b. If the race of the candidate does matter, which candidates did the Court find to be Latino for purposes of the CVRA? On what basis did the Court draw its conclusions concerning candidates' race and ethnicity? Did it take into account voter perceptions of candidates' race and ethnicity?

i. Partially addressed, albeit erroneously, by the PSOD. Plaintiffs incorrectly contend that voter perceptions alone matter, and that Gleam Davis is not Latina because, according to a survey done by plaintiffs' expert, voters do not recognize her as such.

c. Can Latino voters, who may cast up to three or four votes in a single election, prefer more than one candidate? If not, why not?

i. Addressed, albeit erroneously and ambiguously, by the PSOD. Plaintiffs pay lip service to the notion that "a minority group . . . in a multi-seat

plurality at-large election can prefer more than one candidate" (PSOD at p. 17), but nowhere account for that possibility in their analysis.

d. In each relevant election, how does the Court differentiate between candidates preferred by Latino voters and those not preferred by Latino voters?

i. Is the first step in identifying whether a candidate is Latino-preferred to determine which candidates would have won had Latinos been the only voters? If not, why not?

1. Addressed, albeit erroneously, by the PSOD. Plaintiffs appear to be of the incorrect view that the first step in identifying Latino-preferred candidates is determining which candidates have a Latino surname.

ii. If the Court differentiates Latino-preferred candidates from non-Latino-preferred candidates by determining that some candidates received "significantly higher" Latino voter support than others, how does it define "significantly higher"? For example, did Josefina Aranda receive "significantly higher" support from Latino voters in 2002 than Kevin McKeown?

1. Not addressed or resolved by the PSOD.

iii. Can a candidate be Latino-preferred if fewer than 50 percent of Latino voters vote for that candidate? If so, is there any numerical cutoff for voter preference or non-numerical method of differentiating preferred from non-preferred candidates?

1. Not addressed or resolved by the PSOD.

iv. In considering the differences in Latino and non-Latino voter support for candidates, did the Court consider that small differences between ecological-regression and ecological-inference estimates may not be meaningful in this case, because Santa Monica's Latino population is

now and always has been too small and too dispersed for statistical techniques to produce point estimates as accurate as those in the typical federal voting-rights case, where members of the minority group necessarily would account for a majority of eligible voters in a potential district?

1. Addressed, albeit erroneously, by the PSOD. Plaintiffs contend that weighted ecological regression is an accepted statistical method in voting-rights cases, but incorrectly fail to consider that those estimates are prone to uncertainty and error in estimating Latino voter support in Santa Monica in ways that they are not in the typical federal voting-rights case, where minority groups are, of necessity, sufficiently numerous and compact to allow the creation of a majority-minority district.

v. In considering the differences in Latino and non-Latino voter support for candidates, did the Court also consider that estimates produced by ecological regression and ecological inference in this case may be systematically less accurate or inaccurate?

1. Addressed, albeit erroneously, by the PSOD. Plaintiffs contend that weighted ecological regression is an accepted statistical method in voting-rights cases, but incorrectly fail to consider that those estimates are prone to uncertainty and error estimating Latino voter support in Santa Monica in ways that they are not in the typical federal voting-rights case, where minority groups are, of necessity, sufficiently numerous and compact to allow creation of a majority-minority district.

6. Who were the Latino-preferred candidates in each City Council election considered by the Court? In particular, who were the Latino-preferred candidates in each of the seven City Council elections analyzed by plaintiffs' expert, Dr. J. Morgan Kousser?

a. Ambiguously and erroneously addressed by the PSOD. Although it is not clear from the PSOD, it appears that plaintiffs incorrectly suggest that all candidates listed in the table appearing on page 10 of the PSOD (with the possible exception of Gomez and Duron in 2012) were preferred by Latino voters, and that these were the only candidates preferred by Latino voters.

7. Must white bloc voting cause a Latino-preferred candidate to lose in order for that candidate's defeat to be part of a pattern of racially polarized voting? If not, why not? If so, in each of the City Council elections considered by the Court, how many Latino-preferred candidates lost, and how many did so because of white bloc voting? In particular, in each of the seven City Council elections analyzed by plaintiffs' expert, Dr. J. Morgan Kousser, how many Latino-preferred candidates lost, and how many did so because of white bloc voting?

a. Not addressed or resolved by the PSOD. Plaintiffs incorrectly ignore that Dr. Kousser's own data showed that of the 10 Latino-surnamed candidates he examined, at most four were preferred by Latino voters but lost as the result of white bloc voting (fewer than 50%). Plaintiffs also incorrectly ignore that of the 16 Latino-preferred candidates, both Latino-surnamed and non-Latino surnamed, who ran in plaintiffs' favored elections, Dr. Kousser's data showed that only 6 (37.5%) lost, and only 3 (18.75%) lost because of white bloc voting. Plaintiffs thus ignore evidence showing that in City Council elections white voters usually (well over 50% of the time) joined Latino voters in numbers sufficient to enable the candidates preferred by Latino voters to prevail.

8. ***Did the Court consider the results of exogenous elections (e.g., School Board) or voting on ballot initiatives? If not, why not?*** [Addressed, albeit erroneously, by the

PSOD. Plaintiffs incorrectly contend that the results of exogenous elections reinforce a conclusion of racial polarization, notwithstanding the fact that the candidates whom they appear to identify as Latino-preferred almost always won these elections.] ***If so:***

a. Who were the Latino-preferred candidates in each exogenous election considered by the Court?

i. Addressed ambiguously and erroneously by the PSOD. Plaintiffs again incorrectly appear to suggest that a candidate is preferred by Latino voters if he or she has a Latino surname. Plaintiffs do not address Latino voter support for other candidates.

b. In each exogenous election considered by the Court, how many Latino-preferred candidates lost, and how many did so because of white bloc voting?

i. Not addressed or resolved by the PSOD. Plaintiffs focus on 15 candidacies for exogenous elections for the Rent Control Board, School Board, and College Board, but incorrectly ignore the fact that 13 of them were successful. Plaintiffs thus ignore evidence showing that, as in City Council elections, in exogenous elections, white voters usually (well over 50% of the time) joined Latino voters in numbers sufficient to enable the candidates preferred by Latino voters to prevail.

c. How much weight did the Court give exogenous elections in its analysis, relative to the weight given to City Council elections?

i. Addressed ambiguously and erroneously by the PSOD. Plaintiffs incorrectly appear to suggest that exogenous elections should be given no weight at all, but then state, again incorrectly, that the results of exogenous elections support their conclusion.

d. For each ballot initiative considered by the Court, what was the Latino-preferred outcome?

i. Not addressed or resolved by the PSOD.

e. For each ballot initiative considered by the Court, did sufficient numbers of white voters join with Latino voters to enable the ballot initiative to garner a majority of votes within the City in favor of the Latino-preferred outcome?

i. Not addressed or resolved by the PSOD. Plaintiffs incorrectly ignore that the City's white voters joined its Latino voters in sufficient numbers to reject several racially charged propositions (Props. 187, 209, 227, and 54), even though three of these were approved statewide. Plaintiffs thus ignore evidence showing that, as in City Council, Rent Control Board, School Board, and College Board elections, with respect to ballot initiatives, white voters usually (well over 50% of the time) joined Latino voters in numbers sufficient to enable the positions preferred by Latino voters to prevail.

9. Did plaintiffs prove that Latino voters in Santa Monica cohesively prefer certain candidates?

a. Addressed, and resolved, albeit erroneously, by the PSOD. The PSOD states correctly that a "minority group is politically cohesive where it supports its preferred choices to a significantly greater degree than the majority group supports those same choices." Plaintiffs, however, misapply this standard by incorrectly focusing only on elections involving Latino or Latino-surnamed candidates and considering only such candidates to be preferred by Latino voters.

10. Did plaintiffs prove that the white majority in Santa Monica votes sufficiently as a bloc to—in the absence of special circumstances—usually defeat candidates cohesively preferred by Latino voters? [Not addressed or resolved by the PSOD.] ***If so, how?***

a. ***How did the Court define the word "usually," as it is used in Thornburg v. Gingles?***

i. Not addressed or resolved by the PSOD.

b. ***What fraction reflects the Court's conclusion on this issue? In other words, which losing Latino-preferred candidates defeated by white bloc voting are in the numerator, and which Latino-preferred candidates are in the denominator?***

i. Addressed, albeit ambiguously and erroneously, by the PSOD. Plaintiffs appear to state, in the table appearing on page 10 of the PSOD, that voting for certain Latino-surnamed candidates was polarized, and that certain of those candidates lost. Plaintiffs do not address whether losing candidates were defeated by white bloc voting. As discussed above, Plaintiffs incorrectly ignore that Dr. Kousser's own data showed that of the 10 Latino-surnamed candidates he examined, at most four were preferred by Latino voters but lost as the result of white-bloc voting (fewer than 50%). Plaintiffs also incorrectly ignore that of the 16 Latino-preferred candidates, both Latino-surnamed and non-Latino surnamed, who ran in plaintiffs' favored elections, Dr. Kousser's data showed that only 6 (37.5%) lost, and only 3 (18.75%) lost because of white bloc voting. Plaintiffs thus ignore evidence showing that in City Council elections white voters usually (well over 50% of the time) joined Latino voters in numbers sufficient to enable the candidates preferred by Latino voters to prevail.

c. ***Did the Court conclude that Oscar de la Torre's deliberate attempt to lose the 2016 City Council election after his wife filed this lawsuit amounted to a "special circumstance"?***

i. Addressed, albeit erroneously, by the PSOD. Plaintiffs assert, incorrectly, that no evidence supports the conclusion that de la Torre deliberately lost the election, ignoring evidence the de la Torre

conducted this election far differently from his prior successful campaigns for School Board, choosing not to seek endorsements, establish a campaign committee, or engage in any significant fundraising.

11. ***Must a CVRA plaintiff prove vote dilution by showing that voters in the relevant minority group would have a greater opportunity to elect candidates of their choice under an alternative electoral system?*** [Addressed, but not resolved, by the PSOD. Plaintiffs incorrectly appear to suggest that vote dilution is not a requirement, but then contend that they have proven the existence of vote dilution in any event.]

a. If so, against what objective and workable benchmark did the Court measure actual Latino voting strength?

i. Not addressed or resolved by the PSOD. Plaintiffs incorrectly assert that dilution is not a separate element of a CVRA violation distinct from racially polarized voting. Plaintiffs then assert, in a single sentence, without explanation, that they "presented several available remedies (district-based elections, cumulative voting, limited voting and ranked choice voting), each of which would enhance Latino voting power over the current at-large system."

b. Did plaintiffs prove vote dilution through Mr. Ely's estimate of vote totals in the hypothetical Pico District?

i. Addressed in passing and not resolved by the PSOD. Plaintiffs assert in a single sentence, without explanation, that district-based elections "would enhance Latino voting power over the current at-large system."

c. ***Did plaintiffs prove vote dilution through Mr. Levitt's opinions concerning alternative at-large electoral schemes?*** [Addressed in passing and not resolved by the PSOD. Plaintiffs assert in a single sentence, without explanation, that alternative at-large electoral schemes "would enhance Latino voting power over

the current at-large system."] ***If so, did the Court consider historical levels of Latino voter cohesion or turnout?*** [Not addressed or resolved by the PSOD.] ***Or did the Court estimate actual Latino voter turnout in order to determine whether Latino voters' share of actual voters would exceed the threshold of exclusion under a destaggered alternative at-large electoral scheme?*** [Not addressed or resolved by the PSOD.]

12. ***Under what circumstances are the factors enumerated in Elections Code section 14028(e) relevant?*** [Not addressed or resolved by the PSOD, which asserts that these factors support a finding of racially polarized voting in Santa Monica and a violation of the CVRA, but does not define the circumstances that render these factors relevant in this case.]

    a. Were those factors part of the Court's analysis of liability under the CVRA?

        i. Addressed, albeit ambiguously, by the PSOD. Plaintiffs contend that the qualitative factors set out in section 14028(e) support a finding of liability, but do not explain what weight, if any, the Court should give them.

    b. If so, what were the specific factors considered by the Court, and what factual findings did the Court make relating to those factors?

        i. Addressed, albeit erroneously, by the PSOD, which recites several factors and proposes (incorrect) factual findings.

    c. What causal connection, if any, did the Court find between (i) any factors considered by the Court and (ii) vote dilution?

        i. Not addressed or resolved by the PSOD.

13. ***Did plaintiffs prove that Santa Monica's method of election has caused a disparate impact on minority voters?*** [Not addressed or resolved by the PSOD. Plaintiffs incorrectly appear to suggest that to prove their Equal Protection claim they are required to show only discriminatory intent.]

a. ***Were plaintiffs required to prove, for purposes of their Equal Protection claim, that minority voters would have a greater electoral opportunity under some other electoral system?***

i. Not addressed or resolved by the PSOD. Plaintiffs incorrectly appear to suggest that to prove their Equal Protection claim they are required to show only discriminatory intent.

b. ***When did the minority populations in Santa Monica become large and concentrated enough that an alternative electoral system could have enhanced minority voting strength? Which system(s), specifically, would have done so?***

i. Not addressed or resolved by the PSOD.

c. ***Did the 1946 Charter amendment—which put in place the system under which seven City Council members are elected at-large in staggered elections, and which eliminated designated posts—strengthen or weaken minority voting power?***

i. Not addressed or resolved by the PSOD. Plaintiffs introduced no evidence showing that the 1946 Charter would weaken minority voting power; to the contrary, unrebutted evidence demonstrated that the Charter could only have enhanced minority voting power.

14. ***Did plaintiffs prove that the relevant decisionmakers affirmatively intended to discriminate against minority voters by adopting and maintaining the current at-large electoral system?*** [Resolved, albeit erroneously, by the PSOD. Plaintiffs conclude, incorrectly, that there is evidence of intentional discrimination in both 1946 and in 1992.] ***If so, what were the relevant decisions, who were the relevant decisionmakers, and what evidence did plaintiffs present showing that those decisionmakers intended to discriminate?*** [Resolved, albeit erroneously, by the PSOD. Plaintiffs incorrectly contend that the Board of Freeholders discriminated in 1946 and that the City Council discriminated in 1992. Plaintiffs purport to identify evidence supporting these

conclusions. As discussed in the detailed objections below, however, the evidence demonstrates that there was no such discrimination.]

a. Did the Court find intentional discrimination relative to Santa Monica's election system at any point before 1946? If so, on which events, statements, or other facts did the Court rely?

i. Not addressed or resolved by the PSOD. The PSOD does not propose, and there is no evidence to support, a finding of intentional discrimination as to events predating 1946.

b. Did the Court find intentional discrimination relative to Santa Monica's 1946 Charter amendment? If so, on which events, statements, or other facts did the Court rely?

i. Addressed, albeit erroneously, by the PSOD. Plaintiffs have purported to identify evidence supporting discrimination on the part of the Freeholders in 1946. As discussed in the detailed objections below, however, the evidence demonstrates that there was no such discrimination.

c. Did the Court find intentional discrimination relative to Santa Monica voters' rejection of Proposition 3 in 1975? If so, on which events, statements, or other facts did the Court rely?

i. Not addressed or resolved by the PSOD. The PSOD does not propose, and there is no evidence to support, a finding of intentional discrimination as to events in 1975.

d. ***Did the Court find intentional discrimination relative to Santa Monica's rejection of district elections in 1992? If so, on which events, statements, or other facts did the Court rely?*** [Resolved, albeit erroneously, by the PSOD. Plaintiffs have purported to identify evidence supporting discrimination on the part of City Councilmembers in 1992. As discussed in the detailed objections

below, however, the evidence demonstrates that there was no such discrimination.]

i. ***If the Court found an affirmative intent to discriminate in 1992, is it premising that finding on what was said or decided at the 1992 Council meeting concerning the City's electoral system? If so, what specific statements or decisions support the Court's conclusion?***

1. Addressed, albeit erroneously, by the PSOD. Plaintiffs rely exclusively on statements made at the City Council meeting in 1992 and focus particularly on the remarks of Councilmember Zane. As discussed in the detailed objections below, however, Councilmember Zane's statements demonstrate no discriminatory intent. To the contrary, Councilmember Zane's comments reflect his desire to craft an election system that would result in strong representation for both the Pico neighborhood and the City's minority residents.

ii. ***Has the Court found that any councilmembers intended to weaken minority voting strength in order to preserve their seats, as was found in*** **Garza v. County of Los Angeles*****? If so, which councilmember(s)?***

1. Addressed, albeit erroneously and ambiguously, by the PSOD. Plaintiffs appear to suggest that Councilmember Zane voted the way he did not in order to preserve his seat, but in order to "maintain the power of his political group to continue dumping affordable housing in the Latino-concentrated [Pico] neighborhood despite their opposition." What political group plaintiffs are referring to is unclear; they previously argued that the relevant "political group" was Santa Monicans for Renters' Rights, but the PSOD nowhere mentions that group, which the

evidence showed has repeatedly backed Latino and other minority candidates, as well as candidates who have advocated for a change to district-based elections and was at the time co-chaired by the Chair of the Charter Review Commission that tentatively recommended a change in the election system. It is unclear whether plaintiffs contend that members of the Council other than Councilmember Zane behaved in a discriminatory way. In any event, as discussed in the detailed objections below, the evidence demonstrates that no Councilmember acted with the intent to weaken minority voting strength.

e. Did the Court find intentional discrimination relative to Santa Monica voters' rejection of Measure HH in 2002? If so, on which events, statements, or other facts did the Court rely?

i. Not addressed or resolved by the PSOD. The PSOD does not propose, and there is no evidence to support, a finding of intentional discrimination as to events in 2002.

f. Did the Court find intentional discrimination relative to Santa Monica's election system at any point after 2002? If so, on which events, statements, or other facts did the Court rely?

i. Not addressed or resolved by the PSOD. The PSOD does not propose, and there is no evidence to support, a finding of intentional discrimination as to any events after 2002.

15. Did the Court make findings under the five-factor framework set out in the United States Supreme Court's decision in* Village of Arlington Heights v. Metropolitan Housing Development Corporation *(1977) 429 U.S. 252? If so, what specific findings did the Court make and what evidence supports those findings?

a. Addressed, albeit erroneously, by the PSOD. Plaintiffs do purport to follow the

Arlington Heights framework, and purport to identify evidence supporting their theory of intentional discrimination. As discussed in the detailed objections below, however, correctly analyzed under the *Arlington Heights* framework, the evidence demonstrates that there was no discriminatory intent.

16. In assessing whether the City's at-large electoral system was adopted or maintained with a discriminatory purpose, and whether the system has had a disparate impact on minority voters, did the Court consider the legitimate, non-discriminatory purposes of the City's at-large electoral system, including but not limited to (i) ensuring that all councilmembers focus on all issues citywide, rather than only those issues facing their particular districts; (ii) giving every voter a say concerning all seven Council seats, not just one; and (iii) affording voters the opportunity to vote for Council seats every two years, not every four years?

a. Not addressed or resolved by the PSOD.

17. In determining that district-based elections should be ordered as a remedy, did the Court resolve the following questions identified in* Sanchez v. City of Modesto *(2006) 145 Cal.App.4th 660, 690, as issues not yet resolved by the Courts of Appeal, and, if so, how:

a. "Is the court precluded from employing crossover or coalition districts (i.e., districts in which the plaintiffs' protected class does not comprise a majority of voters) as a remedy?"

i. Addressed, albeit erroneously, by the PSOD. Plaintiffs assert that Latino voters need not make up a majority of the citizen-voting-age population in any purportedly remedial district, but do not consider the constitutional problems resulting from that assertion. As discussed in the detailed objections below, plaintiffs have failed to show that the at-large election system results in any Latino vote dilution that could be remedied

by any districting plan, including plaintiffs' proposal, in which no district's voting population is more than 30% Latino; as a result, there is no compelling interest that would support ordering either a move to district-based elections or the drawing of a particular district to maximize its percentage of Latino voters.

b. Does the Court's order to move to district-based elections "conform to the Supreme Court's vote-dilution-remedy cases?"

i. Addressed, albeit erroneously, by the PSOD. Plaintiffs incorrectly argue that their proposal complies with *Shaw v. Reno* and related case law.

18. In determining that district-based elections should be ordered as a remedy, did the Court consider the undisputed fact that in Santa Monica, Latinos are not geographically compact or concentrated, with the result being that no district can be drawn in which Latinos constitute a majority of the citizen-voting-age population ("CVAP"), as permitted by California Elections Code § 14028(c)? If not, why not? If so, how did this factor into the Court's choice of remedy?

a. Not addressed or resolved by the PSOD.

19. ***What compelling interest supports the Court's determination to order a district (the Pico Neighborhood District, Ex. 162-1) drawn to maximize that district's percentage of Latino voters?***[2] [Addressed, albeit erroneously, by the PSOD. Plaintiffs incorrectly contend that they need not identify a compelling interest because the rational basis test applies. Plaintiffs also incorrectly contend that even if a compelling interest is required, they have shown one. As discussed in the detailed objections below, a compelling interest is required both because the order to move to district-based elections is based

[2] The City's supplemental request for a statement of decision was filed after the Court's amended tentative decision, which mandated the drawing only of a single district, the Pico Neighborhood District, in accordance with the map in Ex. 162. Subsequently, at a hearing conducted on January 2, 2019, the Court changed its mind and indicated its intent to mandate the drawing of all seven districts in accordance with the map in Ex. 261. The issues below were raised in the supplemental request for a statement of decision in connection with the map in Ex. 162, but apply in the same way to the map in Ex. 261.

solely on racial considerations and because the Pico Neighborhood District (District 1 in Ex. 261) was drawn to maximize its percentage of Latino voters. Moreover, as discussed in the detailed objections below, there is no compelling interest because plaintiffs have failed to show that the at-large election system results in any Latino vote dilution or that Latino voting strength would be increased under a districting plan in which the Latino voting share of the voting population does not exceed 30 percent in any district.]

a. In determining whether there is any such compelling interest, did the Court consider that Latinos will not constitute a majority of the CVAP within the Pico Neighborhood District? If not, why not? If so, how did this factor into the Court's determination?

i. Not addressed or resolved by the PSOD.

b. In determining whether there is any such compelling interest, did the Court consider that the analysis of plaintiffs' own expert confirmed that Latinos do not vote cohesively with other minority groups in Santa Monica, the result being that Latino voters in the Pico Neighborhood District will still require substantial crossover voting from white voters to elect candidates of their choice? If not, why not? If so, how did this factor into the Court's determination?

i. Not addressed or resolved in the PSOD.

c. In determining whether there is any such compelling interest, did the Court consider the Supreme Court's plurality decision in* Bartlett v. Strickland *(2009) 556 U.S. 1, which held that Section 2 of the federal Voting Rights Act cannot mandate the formation of influence districts? If not, why not? If so, how did this factor into the Court's consideration?

i. Not addressed or resolved in the PSOD.

20. If the Court found that a compelling interest supports the remedy here, did the Court find that the chosen remedy was narrowly tailored to serve that compelling interest?

If not, why? If so, how?

a. Addressed, albeit erroneously, by the PSOD. Plaintiffs incorrectly contend that they need not identify a compelling interest or demonstrate narrow tailoring because the rational basis test applies. Plaintiffs also incorrectly contend that even if a compelling interest is required, they have shown one. As discussed in the detailed objections below, a compelling interest is required both because the order to move to district-based elections is based solely on racial considerations and because the Pico Neighborhood District (District 1 in Ex. 261) was drawn to maximize its percentage of Latino voters. Moreover, as discussed in the detailed objections below, there is no compelling interest because plaintiffs have failed to show that the at-large election system results in any Latino vote dilution that could be remedied by any districting plan, including plaintiffs' proposed district, in which the voting population is 30% Latino.

21. If there is no compelling interest supporting the Court's determination to order a move to district-based elections, what justifies the order and how does it conform to the Supreme Court's requirements in vote-dilution remedy cases, given that the only conceivable basis for the ordered change in the City's election system would be to attempt to enhance Latino voting power?

a. Addressed, albeit erroneously, by the PSOD. Plaintiffs incorrectly contend that the rational basis test applies to the CVRA, and that this case does not implicate *Shaw v. Reno* and related case law.

22. ***In determining that district-based elections should be ordered as a remedy, did the Court consider that the majority of Latino voters in Santa Monica will be in districts other than the Pico Neighborhood District? If not, why not? If so, how did this factor into the Court's determination?*** [Not addressed or resolved by the PSOD.]

a. Did the Court consider that the majority of Latino voters in districts other than the Pico Neighborhood District will, unlike under the current at-large election

system, be unable to join with Latino voters outside their own districts, including the Pico Neighborhood District, to elect City Council candidates of their choice? If not, why not? If so, how did this factor into the Court's determination?

i. Not addressed or resolved by the PSOD.

b. Did the Court consider that in most districts other than the Pico Neighborhood District, the percentage of Latino voters within the district will be less than the approximately 13.6% of CVAP that Latino voters currently constitute in Santa Monica as a whole? If not, why not? If so, how did this factor into the Court's determination?

i. Not addressed or resolved by the PSOD.

23. In determining that district-based elections should be ordered as a remedy, did the Court consider the effect of district-based elections on other minority groups in Santa Monica—namely, African Americans and Asians? If not, why not? If so, how did this factor into the Court's determination?

a. Not addressed or resolved by the PSOD.

24. Does the Pico Neighborhood District (Ex. 162-1) serve to remedy the violations found by the Court? If so, how?

a. Addressed, albeit erroneously and ambiguously, by the PSOD. Plaintiffs assert that the Pico Neighborhood District (District 1 in Ex. 261) would be remedial but fail to explain how.

25. In ordering the City's district-based elections to be "in accordance" with the map identifying the Pico Neighborhood District, did the Court consider the effect of that district on other minority groups in Santa Monica—namely, African Americans and Asians? If not, why not? If so, how did this factor into the Court's determination?

a. Not addressed or resolved by the PSOD.

26. ***Section 10010 of the Elections Code requires a political subdivision to, among other***

things, hold a series of public meetings and receive public input concerning proposed district maps, in the event that a court imposes a change from at-large elections to districted elections. Did the Court find that the Pico Neighborhood District drawn by plaintiffs' expert and identified in Exhibit 162-1 was drawn in accordance with section 10010? [Not addressed or resolved by the PSOD. Plaintiffs appear to concede that the seven-district map tentatively ordered by the Court (Ex. 261) was not drawn in accordance with section 10010. Plaintiffs incorrectly appear to argue that section 10010 has no application to the "Court's ability to adopt a district plan without holding a series of public hearings." Plaintiffs ignore section 10010(c), which states that the statute applies to "a proposal that is required due to a court-imposed change from an at-large method of election to a district-based election."]

a. ***If so, how?*** [Not applicable.]

b. If not, did the Court find that there is an exception to section 10010 that applies here? What is that exception, and on what basis did the Court find it applicable here?

i. Not addressed or resolved by the PSOD.

27. With respect to determining the remaining districts for City Council elections going forward, does the Court order the City to comply with Elections Code section 10010? If not, why not?

a. Not applicable given the Court's tentative order that the City must adopt plaintiffs' seven-district map. Plaintiffs incorrectly appear to argue that section 10010 has no application to the "Court's ability to adopt a district plan without holding a series of public hearings." Plaintiffs ignore section 10010(c), which states that the section applies to "a proposal that is required due to a court-imposed change from an at-large method of election to a district-based election."

III. General Objections to PSOD

Lack of record citations. Plaintiffs do not cite trial or hearing transcripts or any exhibits (with

the exception of Exhibit 261) in their PSOD. Such citations would enable the City to respond to all purported factual findings with the requisite particularity, and would allow the Court determine whether those purported findings are adequately supported by the record. Record citations would also facilitate appellate review. The City therefore objects to plaintiffs' failure to cite the record, which serves to conceal the infirmity of their positions.

Legal conclusions delivered by experts. Because the PSOD lacks citations, it is difficult to discern the basis of many of its purported factual findings. The City objects to any such findings to the extent that they depend on legal conclusions delivered by plaintiffs' experts.

Courts must exclude, inter alia, expert testimony concerning "issues of law or . . . legal conclusions." (*Nevarrez v. San Marino Skilled Nursing and Wellness Centre* (2013) 221 Cal.App.4th 102, 122.) Although the Court did not exclude plaintiffs' experts' opinions, it ought to disregard them now to the extent that they do not conform to this longstanding rule.

The Court should also disregard Dr. Kousser's extensive commentary about the meaning of federal voting-rights statutes and decisions, as such testimony violated the basic principle prohibiting expert opinions on legal issues. (*Summers*, *supra*, 69 Cal.App.4th at pp. 1160, 1181.) Dr. Kousser's homemade legal analysis threatens to usurp not just the Court's role as factfinder, but also its role as judge. It is judges, not experts, who have the responsibility to say what the law is and to apply the law to the facts. (See, e.g., *Summers*, *supra*, 69 Cal.App.4th at pp. 1160, 1181 ["Both state and federal courts have held that expert testimony on issues of law is not admissible. . . . The reason is that the [expert] who expounds on the law usurps the role of the trial court."]; see also *Nieves-Villanueva v. Soto-Rivera* (1st Cir. 1997) 133 F.3d 92, 99 [at least eight federal circuit courts prohibit testimony on "applicable principles of law"].)

The Court should disregard not just Dr. Kousser's purported synthesis of the law, but also his application of that law to the facts of this case, which is equally within the exclusive province of the Court. (See, e.g., *Nevarrez*, *supra*, 221 Cal.App.4th at p. 122 ["an expert may not testify about issues of law or draw legal conclusions"]; *Ferreira v. Workmen's Comp. Appeals Bd.* (1974) 38 Cal.App.3d 120, 126 ["The manner in which the law should apply to particular facts is a legal question and is not

subject to expert opinion."]; see also *Terrebonne Parish NAACP v. Jindal* (M.D.La. Oct. 20, 2015, No. 14-069-JJB-SCR) 2015 WL 6157912, at *3 [excluding expert report and testimony because they "read like a judicial opinion, setting forth the relevant legal standards and applying the evidence in this case to argue that Plaintiffs' claims fail"].)

Indeed, Dr. Kousser was impeached countless times during the trial—his bias, inconsistencies, and ever-changing positions demonstrate that his conclusions should be given little weight, particularly since his actual data demonstrate that there is no racially polarized voting or vote dilution in Santa Monica elections.

Experts serving as a conduit for inadmissible hearsay. Under the landmark case *People v. Sanchez* (2016) 63 Cal.4th 665, an expert "cannot . . . relate as true case-specific facts asserted in hearsay statements, unless they are independently proven by competent evidence or are covered by a hearsay exception." (*Id.* at p. 686.)[3] Dr. Kousser repeatedly ran afoul of this rule at trial, including, for example, by relying on an unsworn, unsigned, and manifestly unreliable statement purportedly from former Councilmember Robert Holbrook (Ex. 145).

IV. Specific Objections to the PSOD

Subject to and without waiving the General Objections above, the City asserts its objections to specific propositions of law and purported findings of fact in the table below. The objectionable portions of the PSOD are identified by "Section" and listed in the left-hand column of the table (e.g., the first is 1:18-20, which indicates that the objectionable portion is page 1, lines 18 through 20 of the PSOD), and the City's specific objections and responses are listed in the right-hand column.

Section I: Summary (page 1, lines 1-16)

Objectionable portion of PSOD	Specific objections/responses
1:7-8	Following the Court's issuance of its Amended Tentative Decision, the City filed a supplemental request for a statement of decision.

[3] This rule applies to civil as well as criminal cases. (See, e.g., *People v. Bona* (2017) 15 Cal.App.5th 511, 520 ["Although *Sanchez* is a criminal case, it also applies to civil cases, such as this one, to the extent it addresses the admissibility of expert testimony under Evidence Code sections 801 and 802."]; *Conservatorship of K.W.* (2017) 13 Cal.App.5th 1274, 1282 ["*Sanchez* is not, however, limited in its application to criminal proceedings."]; *People ex rel. Reisig v. Acuna* (2017) 9 Cal.App.5th 1, 10 ["This aspect of *Sanchez* concerning state evidentiary rules for expert testimony (Evid. Code, §§ 801-802) applies in civil cases such as this nuisance lawsuit."].)

Section II: The California Voting Rights Act (page 1, line 17 through page 5, line 6)

The California Voting Rights Act (CVRA) is a state-level counterpart to Section 2 of the federal Voting Rights Act. Like Section 2, the CVRA does not presume that at-large elections are unlawful. Plaintiffs must prove as much by satisfying each and every element of the statute. Exactly what those elements are, however, has yet to be clarified by any court; in fact, one of only three published appellate decisions on the CVRA expressly declined to decide what a plaintiff must prove in order to prevail on a CVRA claim. (*Sanchez v. City of Modesto* (2006) 145 Cal. App. 4th 660, 690.) Nevertheless, the statute itself, in combination with the federal case law from which it borrows, makes plain that there are two key elements: legally significant racially polarized voting and vote dilution.

Voting is "racially polarized" where the relevant minority group and the white majority vote in statistically significant different ways. Such racial polarization is not legally significant unless white bloc voting usually causes minority-preferred candidates to lose.

Identifying minority-preferred candidates is a complex exercise, particularly where, as here, the municipality runs multi-seat elections—that is, where voters vote for more than one candidate in each election. It is difficult to discern racial voting preferences, if any, from a pile of secret ballots in which voters have each voted for between zero and four candidates and indicated neither their race/ethnicity nor their order of preference for various candidates. There is an especially high degree of uncertainty where, as here, minority groups are relatively small and integrated throughout the City. Even if there were no such uncertainty, the parties would still disagree about how to identify the candidates preferred by minority voters—in this case, Latinos.

Plaintiffs proceed from the erroneous assumptions that the only elections that matter are those in which Latino (or Latino-surnamed) candidates ran, and that the only candidates who could possibly be Latino-preferred must themselves be Latino. (Plaintiffs pay lip service to the possibility that Latino-preferred candidates might be non-Latino, but nowhere account for that possibility in their analysis.) The City has maintained from the start of this case that these assumptions, particularly the assumption that voters will necessarily prefer candidates of their own race or ethnicity, are unreasonable and un-constitutional. As one court put it, "[t]o acquiesce in such a presumption would be not merely to resign

ourselves to, but to place the imprimatur of law behind, a segregated political system." (*Lewis v. Alamance Cty., N.C.* (4th Cir. 1996) 99 F.3d 600, 607.)

Accordingly, the Court should apply a three-step process for identifying Latino-preferred candidates that is rooted in federal case law. First, the Court should determine which candidates would have won had Latinos been the only voters. Second, because there may be major differences in the level of Latino support for those candidates, the Court should determine whether any of these candidates received significantly higher support from Latinos than the others (and disregard any candidates who received significantly lower support). Third and finally, if any of the remaining candidates were supported by fewer than half of Latino voters, they, too, should be disregarded. Only through this comprehensive process, rather than through plaintiffs' bleak and narrow-minded conception of voting patterns, can one identify the candidates preferred by Santa Monica's Latino voters, many (but not all) of whom happened to be Latino.

Plaintiffs assert that racially polarized voting (at least as they incorrectly define it) is the only element of the statute. But there is another element set forth in the plain text of the statute: vote dilution. A CVRA plaintiff must prove that a minority group has suffered a diminution of its voting power caused by an at-large electoral system. A simple illustration demonstrates why. Suppose that, in a hypothetical city, a small minority group—perhaps 1,000 people—were highly concentrated in a single voting precinct. Experts like those hired by plaintiffs and the City would have no difficulty in such a case determining the voting preferences of the group. Suppose further that in every election, the minority group votes cohesively for a single candidate, and that, in every election, that candidate loses because he or she receives scarcely any support from white voters. Under those circumstances, the voting could be deemed racially polarized, and the polarization could be deemed legally significant because it has usually caused the defeat of the minority-preferred candidate. But there nevertheless could be no liability, because there would be no hypothetical alternative system in which the small minority group would be sufficiently powerful to elect candidates of its choice. In a districted system, for example, the minority group would command nothing close to a majority of eligible voters, and so it would be just as unable to elect a candidate of its choice as under the challenged system.

Because voting can be "racially polarized," but have no effect on the outcome of an election, racial polarization cannot be the sole touchstone of the liability analysis. There must be some remediable injury. Federal courts have satisfied this requirement by demanding evidence in every Section 2 case that it is possible to draw a constitutionally permissible majority-minority district. Although the CVRA has been interpreted to abandon this requirement (at least with respect to liability), it cannot reasonably be interpreted to have abandoned any requirement of injury in the form of vote dilution. Indeed,, as one of plaintiffs' own experts conceded, if there are no circumstances under which the minority group would have greater electoral power, then there can be no liability under the CVRA.

Objectionable portion of PSOD	Objections/responses
1:18-20	The CVRA does not disfavor at-large election systems. To be sure, a public entity can be liable under the CVRA only if it relies on an at-large method of election, but the statute requires a plaintiff to prove that the electoral system at issue has resulted in vote dilution.
2:7–3:11	Incomplete recitation of the elements of the CVRA. Plaintiffs omit vote dilution, which is required by the statute in Section 14027, which must be given independent meaning. A public entity violates the CVRA only if its at-large method of election "*impairs* the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election, *as a result of the dilution* or the abridgment of the rights of voters who are members of a protected class." (§ 14027, italics added.) Courts interpreting similar language in § 2 of the FVRA require proof of *harm* (vote dilution) and *causation* (a connection between the harm and the electoral system). (E.g., *Gingles*, 478 U.S. at 48, fn. 15; *Gonzalez v. Ariz.* (9th Cir. 2012) 677 F.3d 383, 405; *Aldasoro v. Kennerson* (S.D.Cal. 1995) 922 F.Supp. 339, 369, fn. 10.) California courts have stated, but not yet held, that the CVRA similarly demands proof of vote dilution caused by an election system. (*Rey v. Madera Unified Sch. Dist.* (2012) 203 Cal.App.4th 1223, 1229; *Jauregui v. City of Palmdale* (2014) 226 Cal.App.4th 781, 802; *Sanchez v. City of Modesto* (2006) 145 Cal.App.4th 660, 666.) To prove vote dilution, a plaintiff must show that a protected class would have greater opportunity to elect candidates of its choice under some other electoral system, which serves as a "benchmark" for comparison. (See, e.g., *Reno v. Bossier Parish Sch. Bd.* (1997) 520 U.S. 471, 480; *Holder v. Hall* (1994) 512 U.S. 874, 880 (plurality)[4]; *Gingles*, 478 U.S. at 50, fn.

[4] The Court in *Hall* further explained that, "[i]n certain cases, the benchmark for comparison in a § 2 dilution suit is obvious. . . . But where there is *no objective and workable standard* for choosing a reasonable benchmark by which to evaluate a challenged voting practice, it follows that the voting practice cannot be challenged as dilutive under § 2." (512 U.S. at 880–881, italics added.) Here, the only "objective and workable standard for choosing a reasonable benchmark" is the one selected by the Supreme Court in *Bartlett v. Strickland* (2009) 556 U.S. 1, 16-25 (plurality): a constitutionally

	17.) "[I]n order to decide whether an electoral system has made it harder for minority voters to elect the candidates they prefer, a court must have an idea in mind of how hard it 'should' be for minority voters to elect their preferred candidates under an acceptable system." (*Gingles*, 478 U.S. at 88 (O'Connor, J., concurring).) Where comparison to any reasonable benchmark reveals that a protected class's votes are *not* being diluted—i.e., where that class *already has* a voting opportunity that relates favorably to its population—there is no legal requirement to jettison an at-large system; "there neither has been a wrong nor can be a remedy." (*Emison v. Growe* (1993) 507 U.S. 25, 40–41.)
3:12-18	Even if the CVRA does not require a plaintiff to prove the possibility of a majority-minority district (although it is far from clear that districts falling short of that standard are constitutional), it still must be read to require a plaintiff to prove that some alternative electoral scheme would enhance the voting power of the minority group at issue. Section 14027 requires proof of injury in the form of vote dilution that is caused by an at-large electoral system.
4:2-12	No appellate court has decided that "showing racially polarized voting establishes the at-large election system dilutes minority votes and therefore violates the CVRA." To the contrary, the statute (specifically, section 14027) requires a showing of vote dilution independent of racially polarized voting. This independence makes sense. Even if voting patterns are statistically significantly different across racial or ethnic lines, such differences are irrelevant unless some alternative electoral structure would produce different results. Otherwise, even a protected class of one might be able to make a CVRA case if he could prove that he voted differently from the white majority in most elections, despite the impossibility of any alternative system yielding a different result.
4:12	Racially polarized voting is *an* element of the CVRA, not "[t]he key element."
4:16-17	The "harm" the CVRA is "intended to combat" is vote dilution, which requires proof that an alternative electoral system would yield a different result, not just proof of an at-large system and racially polarized voting. Racially polarized voting, by itself, cannot be an injury, because in many cases it could not be remedied at all (because the relevant minority group is too small and/or dispersed for any alternative electoral system to enhance its voting strength) and because many remedies, including districted elections, harness rather than eliminate racially polarized voting (in other words, they are required as a remedy only because it is assumed that voting will continue to be fractured along racial or ethnic lines).
4:19-22	The CVRA does not direct courts to analyze only those elections in which at least one candidate is a member of a protected class.

permissible single-member district in which minority voters account for a majority of the CVAP. The Court need not follow *Bartlett* to grant judgment in favor of the City, because plaintiffs' hypothetical alternative methods of election would not enhance Latino voting strength. Nevertheless, the City raises this argument here—that the only appropriate vote-dilution "benchmark" is a hypothetical district whose voting-age population is majority-Latino—to preserve it.

	The CVRA repeatedly makes plain that the touchstone of the racial-polarization analysis is not the race or ethnicity of the candidate, but instead the preferences of the voters. Indeed, the statute defines "racially polarized voting" in terms of voter preference. (Elec. Code, § 14026, subd. (e) ["difference . . . in the choice of candidates or other electoral choices that are preferred by voters in a protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate"].) Several portions of Section 14028 similarly highlight the primacy of voter preferences, irrespective of candidate ethnicity. The first sentence of subdivision (b) of Section 14028 provides that "[t]he occurrence of racially polarized voting shall be determined from examining results of elections in which at least one candidate is a member of a protected class or elections involving ballot measures, *or other electoral choices that affect the rights and privileges of members of a protected class*." (Elec. Code, § 14028, subd. (b), italics added.) Plaintiffs conclude that Latino candidacies alone matter only by ignoring the broadly worded final clause, which covers just about any "electoral choice." While some case law suggests that elections involving at least one candidate who is a member of a protected class may be given more weight, it in no way indicates that other elections can or should be ignored. See discussion relating to 8:6-11 & fn.4 below. Further, the subdivision goes on to provide that "the extent to which candidates who are members of a protected class and who are preferred by voters of the protected class . . . have been elected" is only "*[o]ne circumstance* that may be considered in determining a violation of Section 14027 and this section." (Elec. Code, § 14028, subd. (b), italics added.) According to plaintiffs, votes for or against candidates who are members of a protected class are the only relevant circumstance, but it is plain from the statute that the opposite is true, as such voting is described as just "one" relevant circumstance that "may" be considered—not "the only" relevant circumstance that "must" be considered." The final sentence in subdivision (b) also contradicts plaintiffs' theory. That sentence applies to multi-seat at-large elections of the type conducted in Santa Monica: "In multiseat at-large election districts, where the number of candidates who are members of a protected class is fewer than the number of seats available, the relative groupwide support received by candidates from members of a protected class shall be the basis for the racial polarization analysis." The question is whether the phrase "from members of a protected class" modifies "candidates" or "groupwide support." Both the syntax of the sentence itself and consideration of the statute as a whole make clear that it must be the latter. Where the statute addresses the ethnicity of candidates, it consistently uses the phrase "candidates who are [themselves] members of a protected class," including in the very same sentence. Here, by contrast, the statute uses a different formulation—"from members of a protected class"—which must modify "groupwide support." The statute thus provides that courts are to consider the voting support that candidates receive "from members of a protected class," whatever the race or ethnicity of those candidates might be.

	Further, federal law likewise focuses on voter preferences rather than candidates' races or ethnicities. A precondition of liability under the CVRA and FVRA alike is a protected class's ability to elect candidates of its choice. (Elec. Code, § 14027; 52 U.S.C. § 10301, subd. (b).) Both statutes—whose wording is quite similar, as the CVRA was modeled after the FVRA—also provide that "one circumstance" that "may be considered" is the "extent to which" "members of a protected class" "have been elected." (*Ibid.*) Federal courts interpreting this language have consistently held that minority-preferred candidates need not themselves be members of the relevant minority group. Courts regularly warn litigants and experts not to draw the questionable assumption that voters can and do prefer only candidates of their own race or ethnicity. The Fourth Circuit, for example, has held that "Section 2 prohibits any election procedure which operates to deny to minorities an equal opportunity to elect those candidates whom they prefer, *whether or not those candidates are themselves of the minority race*." (*Lewis*, *supra*, 99 F.3d at p. 606.) The court's holding depended not just on the "unambiguous language" of Section 2, but also on its rejection of the presumption that voters always prefer candidates of their own race. Such a presumption "would itself constitute invidious discrimination of the kind that the Voting Rights Act was enacted to eradicate, effectively disenfranchising every minority citizen who casts his or her vote for a non-minority candidate. To acquiesce in such a presumption would be not merely to resign ourselves to, but to place the imprimatur of law behind, a segregated political system. . . ." (*Id.* at p. 607.) The Second Circuit has similarly "decline[d] to adopt an approach precluding the possibility that a white candidate can be the actual and legitimate choice of minority votes," as such a ruling "would project a bleak, if not hopeless, view of our society" and would "presuppose the inevitability of electoral apartheid"—a result particularly incongruous where courts are "interpreting a statute designed to implement the Fourteenth and Fifteenth Amendments to the Constitution." (*NAACP, Inc. v. City of Niagara Falls, N.Y.* (2d Cir. 1995) 65 F.3d 1002, 1016.) Many other courts have reached similar conclusions. (See, e.g., *Ruiz v. City of Santa Maria* (9th Cir. 1998) 160 F.3d 543, 551 [joining eight other circuits "in rejecting the position that the 'minority's preferred candidate' must be a member of the racial minority" and also holding that "a candidate who receives sufficient votes to be elected if the election were held only among the minority group in question qualifies as minority-preferred"].) Indeed, if the CVRA were interpreted to require the Court to examine only elections involving Latino or Latino-surnamed candidates, the CVRA would be unconstitutional as applied to the facts of this case because it would rest on the unconstitutional presumption that Latinos care about and vote for only other Latinos. Such a presumption would work the same sort of stigmatic harm that the Supreme Court aimed to address in such cases as *Shaw v. Reno* (1993) 509 U.S. 630.
5:1-6	Clarification: a plaintiff may not need to demonstrate "the desirability of any particular remedy," whatever precisely that may mean, to establish a violation of the CVRA, but a plaintiff must show that an alternative electoral system would enhance the voting power of the relevant minority

	group. Proving the existence of vote dilution is not the same as selecting a remedy; it is, instead, a matter of proving the existence of a remediable injury in the first place.

Section III.A: "Defendant Employs An 'At-Large' Method of Electing Its City Council, and Plaintiffs Have Standing to Challenge That At-Large Method Pursuant to the CVRA." (page 5, line 7 through page 6, line 6)

Plaintiff Pico Neighborhood Association (PNA) does not have standing to sue the City under the CVRA. Only "voters" may bring a claim under the CVRA, and the PNA is not a voter.

Objectionable portion of PSOD	Specific objections/responses
5:21–6:6	The PNA lacks standing to assert a claim under the CVRA, either directly or representationally. By its express terms, the CVRA creates a cause of action for a "voter who is a member of a protected class and who resides in a political subdivision where a violation of [the CVRA] is alleged." (Elec. Code, § 14032.) But, as a juridical entity, the PNA is neither a voter nor a member of a protected class. A "voter" is "any person who is a United States citizen 18 years of age or older" and "who is registered under" the Elections Code. (Elec. Code, §§ 321, 359.) Only natural persons can therefore qualify as voters. The same is true of membership in a protected class, which the CVRA defines as "a class of *voters* who are members of a race, color, or language minority group, as this class is referenced and defined in the federal Voting Rights Act." (*Id.* § 14026, subd. (d), italics added.) Because the PNA cannot be a voter or a member of a protected class, it necessarily lacks standing to sue. Nor can the PNA bring a representational claim under the CVRA. "If the Legislature has specifically provided by statute for judicial review under certain circumstances, the inquiry as to standing must begin and end with a determination whether the statute in question authorizes an action by a particular plaintiff." (*Midpeninsula Citizens for Fair Hous. v. Westwood Investors* (1990) 221 Cal.App.3d 1377, 1387–1389.) In *Amalgamated Transit Union, Local 1756 v. Superior Court* (2009) 46 Cal.4th 993 (*Amalgamated Transit*), for example, the California Supreme Court rejected a union's attempt to bring a representational suit under the Labor Code Private Attorneys General Act, which vests standing only in "aggrieved employee[s]." (*Id.* at pp. 1004–1005.) "Because plaintiff unions were not employees of defendants, they cannot satisfy the express standing requirements of the act." (*Id.* at p. 1005.) Similarly, because the CVRA limits standing to "voter[s] who [are] member[s] of a protected class" (Elec. Code, § 14032), and because the PNA is not a "voter," much less a "member of a protected class" (*ibid.*), it "cannot satisfy the express standing requirements of the act." (*Amalgamated Transit*, 46 Cal.4th at p. 1005.)

Section III.B: "The Relevant Elections Are Consistently Plagued By Racially Polarized Voting." (page 6, line 7 through page 18, line 5)

There is no legally significant racially polarized voting in the City of Santa Monica, because Latino-preferred candidates are not usually defeated by white bloc voting.

Determining whether there is a history of legally significant racially polarized voting requires an analysis of more than one or even a few elections. Plaintiffs insist that the only elections the Court should examine are those in which a Latino or Latino-surnamed candidate ran for office. This insistence runs counter to most federal case law, as courts generally examine all elections and sometimes assign lesser weight to elections in which no minority candidates were running. But the Court need not examine all elections in order to conclude that there is no history of legally significant racially polarized voting. Even the elections favored by plaintiffs, if properly analyzed, demonstrate that Latino-preferred candidates usually win.

The analysis must begin with the identification of Latino-preferred candidates. Plaintiffs pay lip service to the principles that Latino voters can prefer non-Latino candidates, and, in a multi-seat, plurality at-large election can prefer more than one candidate, but their analysis disregards these principles and looks only at Latino (or Latino-surnamed) candidates. This analysis perpetuates the wrong-headed and unconstitutional assumption that Latino voters can prefer only Latino (or Latino-surnamed) candidates. The Court should reject this analysis. Instead, rather than looking solely at voting patterns for Latino candidates, the Court must look to the voting patterns for all candidates (regardless of their race or ethnicity) to determine which of those candidates are estimated to have received the strongest support from Latino voters. In other words, the list of potentially Latino-preferred candidates must be those who (based on the estimates generated by the statistical methods used by plaintiffs' and City's experts) would have won the election if Latinos had been the only voters.

That a candidate would have won if Latinos had been the only voters does not necessarily demonstrate that the candidate was truly Latino-preferred. For example, suppose one candidate was supported by every Latino voter, whereas the next-most-preferred candidate was supported by just one Latino voter in five. Both would have won if Latinos had been the only voters, but it is unreasonable

to label the second as truly Latino-preferred. Accordingly, courts disregard candidates who win a "significantly" smaller share of the minority vote than other potentially preferred candidates.

As a final step in differentiating Latino-preferred candidates from the rest of the field, the Court should examine whether the Latino electorate truly did cohesively support any of the remaining potentially preferred candidates. Some courts reasonably adopt a numerical cutoff for such cohesion—50 percent. Where fewer than 50 percent of Latino voters supported a candidate, that candidate was not truly "preferred" by Latino voters.

As a result of this three-step analysis, the Court will identify—by relying on estimates of voting behavior alone, rather than by indulging in impermissible assumptions that minority groups will vote only for "one of their own"—the candidates cohesively backed by the Latino electorate. Applying this three-step analysis to the seven elections on which plaintiffs have relied (those plaintiffs have identified as involving at least one Latino-surnamed candidate), and using the data generated by plaintiffs' own expert, results in the identification of 16 Latino-preferred candidates.

Identifying the Latino-preferred candidates is of course only part of the analysis. The Court must also determine whether those candidates won or lost and, if they lost, whether it was because of white bloc voting or for some other reason, including a lack of support from other minority groups or some "special circumstances" that should exempt an election from the analysis.

In this case, the data generated by plaintiffs' own expert reveals that just six of the 16 Latino-preferred candidates who ran in the Council elections favored by plaintiffs lost, and only three were even arguably defeated by white bloc voting. And, even if the Court were to limit itself to the 10 Latino-surnamed candidates to whom plaintiffs limit their analysis, the data generated by plaintiffs' own expert reveals that at most four of those 10 were both preferred by Latino voters and even arguably defeated by white bloc voting. Under either approach, the result is far from "usual" defeat of Latino-preferred candidates at the hands of a cohesive white majority, as the law requires.

Elections for other local offices underscore this conclusion. In the PSOD, plaintiffs point to differences in the level of Latino and white support for various Latino-surnamed candidates for local offices. But such differences are of no legal significance where the candidates won. Indeed, of the 15

candidacies noted in the PSOD, excluding the one that was effectively unopposed, 13 were successful. Looking at initiatives yields the same results. The City's white voters joined its Latino voters in sufficient numbers to reject several racially charged propositions (Props. 187, 209, 227, and 54), even though three of these were approved statewide. Plaintiffs' purported evidence of liability instead shows that Latinos are consistently able to elect candidates (and prevail on issues) of their choice.

Objectionable portion of PSOD	Specific objections/responses
6:20-26	The CVRA does not focus solely on elections in which at least one candidate is a member of the protected class of interest. See the response to 4:19-22 above. *Gomez v. City of Watsonville* (9th Cir. 1988) 863 F.2d 1407 is an FVRA case that is not properly read as mandating in all cases a focus solely on elections in which at least one candidate is a member of the protected class of interest.
6:28–7:5	Plaintiffs are conflating the vote-dilution element in Section 14027 with the racial-polarization element in Section 14028. They are distinct and must be given independent meaning. Plaintiffs' reading of the statute would effectively delete Section 14027 from the CVRA. Plaintiffs also misinterpret *Gingles*. Satisfying the third *Gingles* preconditions "demonstrates that submergence in a white multimember district impedes its ability to elect its chosen representatives" only because the *first Gingles* precondition has necessarily already been satisfied. Courts adjudicating Section 2 claims do not reach the second and third *Gingles* preconditions unless and until they are satisfied that plaintiffs can satisfy the first *Gingles* precondition (by showing that it is possible to draw a constitutionally permissible district in which the relevant minority group accounts for a majority of eligible voters). Here, by contrast, plaintiffs have insisted that vote dilution is not an element of the CVRA, and that the statute does not require a plaintiff to demonstrate that a majority-minority district is possible. If there is no requirement to prove vote dilution through some means—whether the possibility of a majority-minority district or otherwise—then satisfying the second and third *Gingles* preconditions alone could not possibly show that "submergence in a white multimember district impedes [a minority group's] ability to elect its chosen representatives." Even a trivially small but consistently cohesive minority group could do so, despite the fact that the group could not possibly elect candidates of its choice under any alternative electoral scheme.
7:6-18	The parties agree that ecological regression and ecological inference are appropriate methods of estimating voting behavior in Section 2 cases. The parties differ on the question whether the estimates reached in this case—where the relevant minority group is small and integrated throughout the City—are a suitable basis for drawing firm conclusions about voting behavior. Because federal law requires plaintiffs to demonstrate the viability of a majority-minority district, every federal case consistent with

	current law necessarily features a larger and more compact minority group, such that minorities account for the vast majority of voters in many precincts. Nearly homogeneous precincts make the analysis far more accurate (and the confidence intervals *much* narrower). (See, e.g., *Garza v. City of Los Angeles* (C.D.Cal. 1990) 756 F.Supp. 1298, 1337–38.) Further, the confidence intervals here are not just wide, but likely systematically inaccurate, for reasons explained below in response to 15:4-7, 15:8-10, 15:16-20, 15:20–16:2, 16:3-6, and 16:6-12, which objections are incorporated by reference here.
7:22–8:1 & fn. 3	*Neither* expert's analyses demonstrate legally significant racially polarized voting. There is no evidence that (properly identified) Latino-preferred candidates usually lose because of white bloc voting. To the contrary, Latino-preferred candidates generally win City Council elections, and almost always win other local elections. To the extent plaintiffs rely on the opinions asserted by their experts, those opinions are without basis in the fact and represent legal conclusions premised on incorrect legal standards to which the City objects for the reasons set forth in the general objections above.
8:1-4	Plaintiffs are incorrect that in "most elections where the choice is available, Latino voters strongly prefer a Latino candidate running for Defendant's city council, but, despite that support, the preferred Latino candidate loses." Plaintiffs focus on 10 candidates in seven elections. (PSOD at 10.) In 1996, the Latino-surnamed candidate, Alvarez, placed seventh (by Dr. Kousser's point estimates) among Latino voters, with just 22% of the Latino vote. (Ex. 275.) This was not "strong" support. In 2008, the Latino-surnamed candidate, Piera-Avila, placed third (by Dr. Kousser's point estimates) among Latino voters, with just 33.3% of the vote. (Ex. 284.) This was not "strong" support. In 2012, Latino voters strongly preferred Vazquez (Ex. 287), and he *won*. They did not strongly prefer Gomez or Duron. Gomez placed fifth (by Dr. Kousser's point estimates) among Latino voters, with just 30.4% of the vote. (*Ibid.*) Duron placed tenth among Latino voters, with just 5.0% of the Latino vote. (*Ibid.*) Finally, Latino voters preferred both Vazquez and de la Torre in 2016; Vazquez *won*. Thus, of the 10 candidates, only four were both preferred by Latino voters and lost: Vazquez in 1994, Aranda in 2002, Loya in 2004, and de la Torre in 2016. Moreover, with respect to these four, as discussed below: it was not white bloc voting that resulted in Vazquez's 1994 loss; Loya and de la Torre declined to support Aranda for an important endorsement in 2002 – instead throwing their support to Abby Arnold, a non-Latina candidate; and de la Torre chose to forego his previously successful campaign strategies in 2016. (E.g., Tr. 207:24–210:26, 2478:27–2481:6; see also response to 12:3-5 & fn. 10 below.) In addition, inexplicably, plaintiffs ignore the 2014 election in which Zoe Muntaner, a Latina-surnamed candidate (see Ex. 302-131) ran and placed eighth among Latino voters, with just 8% of the Latino vote. (Ex. 1653A at 30.) Even if plaintiffs' statement were factually accurate, it would nevertheless be irrelevant. For reasons explained above (in response to 4:19-22), the Court should determine which candidates are Latino-preferred irre-

	spective of their race—*not*, as plaintiffs suggest, simply assume that Latino or Latino-surnamed candidates will be the only candidates preferred by Latino voters.
8:6-11 & fn. 4	For reasons explained above (in response to 4:19-22), the CVRA does not call for analysis only of those elections in which at least one candidate is a member of the protected class. For each and every election, the Court should determine which candidates are Latino-preferred irrespective of their race—*not*, as plaintiffs suggest, limit its analysis only to "racially-contested elections" and assume that Latino or Latino-surnamed candidates will be the only candidates preferred by Latino voters. Further, even if it were appropriate to give greater weight to elections in which at least one Latino or Latino-surnamed candidate ran, it would be legal error to ignore all other elections. The CVRA itself does not instruct courts to do so. Nor does the relevant federal case law. Some courts give equal weight to *all* elections, irrespective of the number of members of a protected class running. (E.g., *Lewis*, *supra*, 99 F.3d at 608–609.) Other courts give less weight to elections in which no candidate was a member of the protected class, as several parentheticals in footnote 4 of the PSOD make clear. (See also, e.g., *Rural W. Tenn. African-American Affairs Council v. Sundquist* (6th Cir. 2000) 209 F.3d 835, 840; see also *Ruiz v. City of Santa Maria* (9th Cir. 1998) 160 F.3d 543 ["Most courts hold that a fully non-minority election may be relevant and is admissible to determine whether there is a voting bloc of sufficient power that usually defeats a minority's preferred candidate. An election pitting a minority against a non-minority, however, is considered more probative and accorded more weight."].) The City maintains that the Court should analyze and give equal weight to *all* elections. At the very least, it should give *some* weight to all elections, including elections in which no member of the protected class ran for office. Plaintiffs ignore those elections altogether without justification.
8:12–9:17 & fn. 5	Plaintiffs have misread *Gingles*. The opinion's use of the phrase "black candidate" did not mean that the only candidates who could be preferred by black voters must themselves be black. In his plurality opinion, Justice Brennan clarified as much: "Because both minority and majority voters often select members of their own race as their preferred representatives, it will frequently be the case that a black candidate is the choice of blacks, while a white candidate is the choice of whites. [Citation.] Indeed, the facts of this case illustrate that tendency—blacks preferred black candidates, whites preferred white candidates. Thus, as a matter of convenience, we and the District Court may refer to the preferred representative of black voters as the 'black candidate' and to the preferred representative of white voters as the 'white candidate.' Nonetheless, the fact that race of voter and race of candidate is often correlated is not directly pertinent to a § 2 inquiry. Under § 2, it is the *status* of the candidate as the *chosen representative of a particular racial group*, not the race of the candidate, that is important." Since *Gingles* was decided, courts have uniformly concluded that a minority group can prefer a non-minority candidate, and there is no reason

	to conclude that the CVRA departs from this norm, as was explained above in response to 4:19-22. Plaintiffs themselves admit as much multiple times in their PSOD. (See, e.g., PSOD at 17 ["No doubt, a minority group can prefer a non-minority candidate"].) And yet their expert's analysis does not even account for that possibility, as it addresses only the support for Latino-surnamed candidates, despite the fact that non-Latino-surnamed candidates received greater Latino support (by the point estimates of plaintiffs' expert) than losing Latino-surnamed candidates in 1996, 2008, and 2012, as well as statistically and practically equivalent support in 1994 and 2002. In footnote 5, plaintiffs confuse the issue. The cases they cite stand, at most, for the proposition that courts should give cross-racial elections greater weight than elections in which no member of the protected class ran. But the paragraph from which footnote 5 hangs appears to be devoted to a different point—that in analyzing only cross-racial elections, experts should examine only the levels of minority and non-minority support for minority candidates and ignore any other estimates of voter behavior. The cases do not stand for that proposition. In sum, plaintiffs cannot both admit that non-minority candidates could be preferred by minority voters and also aver that the analysis of any election must begin and end with minority candidates. Accordingly, even if the Court accords no weight at all to elections in which no Latino or Latino-surnamed candidates ran—which itself would be legal error—it should at least account for the possibility that non-Latino-surnamed candidates were preferred by Latino voters over Latino-surnamed candidates, as was the case in 1996 (Ex. 275), 2008 (Ex. 284), and 2012 (Ex. 287) (and 2014 as well, Ex. 1653A at 30), or the possibility that non-Latino-surnamed candidates and Latino-surnamed candidates were, as a statistical and practical matter, equally preferred, as was the case in 1994 (Ex. 272) and 2002 (Ex. 278).
10:1-14	For reasons already explained, plaintiffs err in focusing exclusively on elections in which Latino-surnamed candidates ran. Elections in which no such candidates ran deserve equal weight in the analysis or, at the very least, *some* weight. Plaintiffs also err in focusing exclusively on voting for the Latino-surnamed candidates in those few elections that plaintiffs' expert did analyze. Focusing on the Latino-surnamed candidates alone does not account for the possibility that Latinos preferred non-Latino-surnamed candidates over one or more Latino-surnamed candidates, as they did in, for example, 1996 (Ex. 275), 2008 (Ex. 284), and 2012 (Ex. 287) (and 2014 as well, Ex. 1653A at 30), or the possibility that the Latino preference for the Latino-surnamed candidate was not meaningfully stronger than the Latino preference for a non-Latino-surnamed candidate, as was true in 1994 (Ex. 272) and 2002 (Ex. 278). Finally, the PSOD's report of Dr. Kousser's analysis is incomplete because it shows only the percentages of Latino and non-Hispanic white support. Dr. Kousser's analysis actually included estimates of percentage support among two additional groups—African-Americans and

	Asians. This is important because Dr. Kousser's own weighted-regression analyses demonstrate that non-Hispanic whites sometimes supported Latino-surnamed candidates at levels almost identical to those at which they supported their other preferred candidates, and that the true cause of the Latino-surnamed candidates' defeat was thus not white bloc voting, but instead the bloc voting of other minority groups. This is particularly true of Tony Vazquez in 1994, who received substantial support from white voters but almost no support from African-Americans and Asians—a deficiency that cost him the election. In sum, plaintiffs have failed to account for the third *Gingles* precondition, which requires a showing of causation. Where whites voted sufficiently as a bloc for the candidate to win, but other minority groups did not, the third precondition cannot be satisfied, and any racially polarized voting cannot be legally significant.
10, fn. 6	It is Dr. Kousser's view that weighted ER is preferable on these facts. It is far from clear that weighted ER is indeed the best method, however, not least because it yields manifestly absurd estimates of voting behavior (e.g., that well over 100% of Latino voters voted for a particular candidate, or that a negative number of voters did so). In any event, for the reasons explained below in response to 15:4-7, 15:8-10, 15:16-20, 15:20–16:2, 16:3-6, 16:6-12, which objections are incorporated by reference here, none of these estimation methods consistently yields meaningful results in this context, where the relevant minority group is so small and so integrated throughout the City.
10, fn. 7	Gleam Davis is Latina. (Tr. 4303:17-20, 4305:19–4306:26, 4350:9–4360:5.) The CVRA defines "protected class" by reference to the FVRA. (§ 14026(d).) The FVRA, in turn, defines as one protected class "persons who are . . . of Spanish heritage." (52 U.S.C. §§ 10303(f)(2), 10310(c)(3).) Because the statute speaks only in terms of the fact of Spanish heritage, not others' perception, Ms. Davis is Latina, and Mr. Brown's poll is irrelevant. What is more, contrary to their representation in footnote 7, no case or statute cited in footnote 5 of the PSOD supports the proposition that the perception of voters trumps the fact of Spanish heritage.
10, fn. 8	This is an inaccurate description. Voters can cast at most one vote for a particular candidate, so an estimate of the number of voters "who cast at least one vote for each candidate" would be the same as the number who cast one vote for that candidate – this is what Dr. Kousser estimated. Significantly, the statistical estimates of group support for candidates says nothing about the preferred ranking of candidates by individual voters. Thus, for example, in 2004, we cannot know how many of the 106% of Latino voters who Dr. Kousser estimated voted for Loya had Loya as their first preference, as compared to those who had her as their second, third, or fourth preference (that election being for four seats with the result that voters could cast up to four votes). (Tr. 3170-3180, Ex. 1917.) This is yet another reason why it is necessary to begin the analysis of who is a preferred candidate not by looking solely to a Latino-surnamed candidate, but by looking to all the candidates who received sufficient Latino support to win; it is also another reason why in many circumstances it is entirely appropriate to conclude that there is more than one Latino-preferred candidate.

11:1	Again, plaintiffs have told an incomplete story. In 1994, Vazquez received sufficient support from whites to win; indeed, if only whites had voted, Vazquez would have won in 1994. It was his failure to attract African-American and Asian support that doomed his candidacy. Aranda lost in 2002, but Latinos' preference for her was indistinguishable from their preference for McKeown, who won. Piera-Avila was not preferred by Latino voters in 2008. Genser was, and he won. Gomez and Duron were not preferred by Latino voters in 2012, so purported racial polarization is irrelevant. And Vazquez won in both 2012 and 2016, which also makes any purported racial polarization irrelevant. Under a proper analysis, racially polarized voting arguably causes the defeat of a Latino-preferred candidate *at most* in three of the seven elections identified by plaintiffs (2002, 2004, and 2016), and in two of those elections (2002 and 2016), another candidate who enjoyed roughly identical support from Latino voters won.
11:2-8	Plaintiffs did not at trial and have not in their PSOD defined what it means for a candidate to be "serious," nor did they supply evidence at trial or any explanation in their PSOD as to how "seriousness" influences the analysis. Losing Latino-surnamed candidates did *not* receive the most votes in all but one of the seven elections analyzed by plaintiffs' expert. Plaintiffs insist that the point estimate of Latino support supplied by weighted regression is the most reliable. In 1994, the point estimate of Latino support for both Tony Vazquez and Pam O'Connor exceeds 100%, which plaintiffs' expert interprets to mean that just about every Latino voter voted for those candidates. (Ex. 272; Tr. 754:2-9, 769:23-25, 804:18-21.) In 1996, the point estimate of Latino support for the Latina-surnamed candidate, Donna Alvarez, is lower than that for *six* other candidates. (Ex. 275.) In 2002, the point estimate of Latino support for Kevin McKeown (76.8) is not meaningfully different from that of the Latina candidate, Josefina Aranda (82.6). (Ex. 278.) In 2008, the Latina candidate, Linda Piera-Avila, received fewer Latino votes than *two* non-Latino candidates, Richard Bloom and Ken Genser. In 2016, the point estimate of Latino support for the *winning* Latino candidate in 2016, Tony Vazquez (78.3), is not meaningfully different from that of the losing Latino candidate, Oscar de la Torre (88.0). (Ex. 290.) And in 2014, an election plaintiffs ignore, the point estimate of Latino support for the Latino-surnamed candidate, Zoe Muntaner, is lower than that for *seven* non-Latino candidates. (Ex. 1653A at 30.)
11:8-15	Plaintiffs' contention that Councilmember Vazquez "barely won" in 2012 is irrelevant. He won, and that is all that matters. Racial or ethnic differences in voting patterns cannot be legally significant if the minority-preferred candidate wins, as that candidate necessarily will have received

	sufficient crossover support from white voters. In other words, the victories of minority-preferred candidates necessarily weigh against a finding that the "majority votes sufficiently as a bloc to enable it . . . usually to defeat the minority's preferred candidate." (478 U.S. at 51 [third *Gingles* precondition].) If plaintiffs are now implying that 2012 presented a special circumstance, such that the election should not factor into the court's analysis of the third *Gingles* precondition, they waived any such argument, as was noted in footnote 8 (page 8) of the City's Closing Brief.
11:16	The Court must determine not only that Vazquez lost, but *why* he lost. If the cause of his defeat was not white bloc voting, then the defeat cannot be legally significant under the third *Gingles* precondition. Plaintiffs' own expert's analysis demonstrates that Vazquez lost not because of white bloc voting, but because of a lack of black and Asian support. Had only whites and Latinos voted, Finkel and Vazquez would have won, as they are estimated to have received the largest shares of Latino votes (122.4% and 145.5%, respectively) and the second- and third-largest shares of white votes (37.6% and 34.9%, respectively) in a three-seat election. In addition, Latino support for Vazquez was not statistically distinguishable from Latino support for other candidates. (Ex. 272.) What is more, plaintiffs' expert, Dr. Kousser, estimates that three candidates in that year received more than 100% of Latino votes (*ibid.*), an admittedly impossibly high figure that Dr. Kousser would interpret to mean that each candidate received universal support from Latino voters. (Tr. 754:2-9, 769:23-25, 804:18-21.)
11:17-18	Aranda was not meaningfully more preferred than McKeown, who won. Their Latino-support point estimates are nearly identical (82.6% and 76.8%)—far from "significantly" different, either under the relevant cases (e.g., *Levy v. Lexington Cty.* (4th Cir. 2009) 589 F.3d 708, 716) or as a statistical matter, particularly given the large confidence intervals around these point estimates. (See Ex. 278 [confidence interval for Aranda ranges from 57.9% to 107.3%; confidence interval for McKeown ranges from 31.7% to 121.9%]; Tr. 3064:12-21 [Mr. Levitt agreeing that there is "substantial overlap between Ms. Aranda and Mr. McKeown's support from the Latino electorate"].) Moreover, in 2002, both Loya and de la Torre declined to support Aranda for an important endorsement – instead throwing their support to Abby Arnold, a non-Latina candidate. (E.g., Tr. 207:24–210:26, 2478:27–2481:6.)
11:19-21 & fn. 9	It is unclear what plaintiffs mean by "serious," and they provide no basis for distinguishing "serious" from "not particularly serious" or non-serious candidates. The City's three-pronged approach to identifying Latino-preferred candidates, on the other hand, incorporates a 50% vote threshold precisely to ensure that candidates are indeed Latino-preferred. Piera-Avila fell well short of this threshold in 2008. It is also unclear what plaintiffs mean by "significant support." In other elections, plaintiffs focus exclusively on point estimates of Latino sup-

	port—e.g., in the 2002 election, in which they erroneously assert that Aranda was meaningfully more preferred than McKeown. And yet in the 2008 election, plaintiffs focus on Piera-Avila alone despite the fact that the point estimates of Latino support for two white candidates (Genser at 55.1% and Bloom at 49.7%) are higher than the point estimate of Latino support for Piera-Avila (33.3%). Indeed, the difference between the point estimates of Latino support for those white candidates and the point estimate for Piera-Avila—between 16.4 and 21.8 percentage points—vastly exceeds the difference in point estimates of Latino support for Aranda and McKeown in 2002 (5.8 percentage points, which is also notably smaller as a percentage of total estimated support). In sum, the numbers demonstrate that Piera-Avila was not preferred by Latinos. She received a small share of the Latino vote—and significantly less support than two white candidates. Her defeat—and any difference between Latino and white voting for her—is therefore legally irrelevant under *Gingles*. Finally, it is not clear in the least from the Supreme Court's decision in *Gingles* that the example of Mr. Norman underscored any conclusion about racially polarized voting. What is clear from the opinion, however, is that a candidate must be preferred by the minority group to be legally relevant. Latinos did not cohesively prefer Piera-Avila.
11:21-23	Irrelevant. As noted above (with respect to 11:8-15), plaintiffs waived any argument that the 2012 election presented "special circumstances."
12:1-3	Differences in voting patterns are irrelevant in this election. Vazquez won. Racially polarized voting is not legally significant under *Gingles* unless white bloc voting is usually sufficient to *defeat* the preferred candidates of minority voters. Where those preferred candidates win, the voting habits of white voters are irrelevant.
12:3-5 & fn. 10	De la Torre was not meaningfully more preferred than Vazquez, who won. And the Court should disregard his candidacy in any event because de la Torre threw the election in order to support this lawsuit. Plaintiffs are wrong that no evidence supports that conclusion; the City cited a great deal of evidence in its closing brief and proposed verdict form. In 2016, after his wife and his organization (PNA) filed this lawsuit, de la Torre entered the City Council election. In his multiple successful School Board campaigns, de la Torre had sought endorsements from civic organizations; raised as much as $35,000; used a candidate-control committee; and advertised, including with mailers. (E.g., Ex. 1203 [ad]; Ex. 1706 [SMRR endorsement]; Tr. 2500:16–2513:19 [testimony concerning de la Torre's efforts in his prior campaigns].) Other candidates, both successful and unsuccessful, described taking similar steps in their campaigns. (E.g., Tr. 194:20–196:4 [Loya]; Tr. 3411:6–3420:28 [O'Day].) Indeed, plaintiffs have repeatedly contended that raising money and securing endorsements are essential to winning in Santa Monica. But in 2016, de la Torre sought no endorsements, raised less than $1,000, had no candidate-control committee, and did no advertising. (E.g., Ex. 1204, Tr. 2516:1–2517:28, 2518:12-17, 2520:10-20 [de la Torre entered race late and decided not to seek any endorsements]; Tr. 2522:17–2523:25 [quickly ceased fundraising efforts]; Tr. 2524:26–2527:19 [although he claimed at

	deposition to have used a candidate-control committee, he could not account for the fact that the City has no record of any such committee]; Tr. 3423:13-25, 3427:8-137 [O'Day never saw de la Torre canvassing for votes or at candidate forums, though O'Day observed de la Torre doing such things for his School Board campaigns]; Tr. 4050:18–4051:14 [Jara, who had campaigned on behalf of de la Torre in School Board elections, did not believe he was interested in winning a Council seat].) This evidence (among other evidence from the trial record) shows that he ran and lost on purpose to bolster plaintiffs' weak case. Finally, plaintiffs contend that de la Torre's consistently strong performance among Latinos somehow proves that he must have tried to win in 2016 to the same degree that he did in School Board elections. This is a non sequitur that does not respond to the City's argument. De la Torre knew that he could count on the support of a subset of voters (including a large subset of Latino voters) even without extensive campaigning. But, like any other candidate, he would have to convince other voters (including non-Latino voters) of the merits of his candidacy by campaigning. And the evidence shows that he may very well have won had he done so; de la Torre was successful with white voters in his School Board runs, no doubt in large part due to his extensive campaigning efforts. (See, e.g., Ex. 1653A at 26–29.)
12:16–13:9	For all the reasons discussed above, this case does not present the prototypical illustration of legally significant racially polarized voting. To the contrary, *neither* Dr. Lewis's analyses *nor* Dr. Kousser's analyses reveal legally significant racially polarized voting, regardless of whether their analyses are confined to elections involving at least one Latino-surnamed candidate.
13:10–14:8	Plaintiffs are correct in recognizing that exogenous elections are entitled to some weight, though less than the City Council elections at issue. Plaintiffs' argument that exogenous elections must be disregarded because they cannot "be used to undermine a finding of racially polarized voting in endogenous elections" is irrelevant because in this case the results of the exogenous elections are consistent with those of the endogenous elections, there is no legally significant racially polarized voting in either. Moreover, even if the Court were to find legally significant racially polarized voting in the endogenous City Council elections, it would be premised on such a thin showing that it would remain appropriate to rely on exogenous elections, which overwhelmingly dispel any claim of legally significant racially polarized voting. See discussion under 14:8-15:3 below. Plaintiffs have mischaracterized *Bone Shirt*, which concludes that "exogenous elections hold some probative value," but less than endogenous elections. It does not refer to "federal courts . . . rel[ying] upon exogenous elections involving minority candidates to *further support* evidence of racially polarized voting in endogenous elections." The parenthetical also does not fit *Jenkins*, which holds that a district court may permit a defendant to introduce evidence of elections in which no minority candidate ran, but notes that such evidence of such elections

	may not be enough to overcome contrary evidence of endogenous elections. There is a period missing after the string cite concluding on the first line of page 14. The *Cottier* decision cited by the plaintiffs is not good law. In a subsequent *en banc* decision, the Eighth Circuit concluded that the district court did *not* err in relying on exogenous elections (604 F.3d 553, 561–562), and that its original judgment, entered on March 22, 2005 (but reversed in the May 5, 2006, Eighth Circuit three-judge panel decision cited by plaintiffs), "should have been affirmed." (604 F.3d at 562.) Accordingly, "[t]he panel opinion in *Cottier I*"—that is, the opinion cited by plaintiffs—"is set aside in its entirety, and it should not be treated as binding circuit precedent." (*Ibid.*)
14:8–15:3	Racially polarized voting is not legally significant under *Gingles* unless white bloc voting is usually sufficient to *defeat* the preferred candidates of minority voters. Where those preferred candidates win, the voting habits of white voters are irrelevant. And Latino-preferred candidates overwhelmingly *win* School Board, College Board, and Rent Board elections. Of the 15 candidacies listed in the chart appearing on pages 14 and 15 of the PSOD, excluding one that was effectively unopposed (Duron for rent board in 2014), 13 were successful. Plaintiffs' argument thus highlights the degree to which their theory of this case is inconsistent with the third *Gingles* precondition. Voting-rights statutes, the CVRA included, were never meant to identify liability and supply a remedy where the candidates preferred by minority groups almost always win.
14, fn. 11	Plaintiffs incorrectly attempt to distract from the record of success of Latino and Latino-preferred candidates in exogenous elections. The performance of Latino candidates in Council elections is not relevant unless those candidates are also preferred by Latino voters. Latino-preferred candidates have usually prevailed in Council elections. And the example of de la Torre does not prove that there is a different "political reality" in City Council and exogenous elections because de la Torre threw the Council election in 2016, doing his best to win Latino votes and not win white votes in order to support this lawsuit, as demonstrated by the City's response to 12:3-5 & fn. 10, which objections are incorporated by reference here.
15:4-7	Dr. Lewis's analysis in his report and at trial identified several limitations of the use of ecological regression and ecological inference in Santa Monica based on the demographic data. Specifically, Dr. Lewis used the neighborhood model to illustrate how the key assumptions applied to the data drive the interpretation of the results. (Tr. 2037:22-2038:18; 2236:12-2243:26.) When one assumes that neighbors vote alike regardless of their race or ethnicity, the results of the ecological regression model yields results that suggest that neighbors vote alike. (*Ibid*.) On the contrary, when one assumes that race or ethnicity is the motivating factor for voters, the ecological regression model yields results suggesting that members of a particular race vote alike. (*Ibid*.) As a result, Dr. Lewis

	further explained, there is a degree of uncertainty in the estimates provided by the ecological regression model above and beyond those reported in the confidence intervals and standard errors. (Tr. 2038:19-2039:10.)
15:8-10	Dr. Lewis identified several limitations of the data provided by the application of ecological regression and ecological inference analysis in Santa Monica. Among those limitations is the fact that the use of ecological regression and ecological inference analysis in jurisdictions, like Santa Monica, where there are no homogenous Latino precincts and the precincts being analyzed are less than majority-Latino results in an increase the uncertainty in the estimates provided by the ecological regression model above and beyond those reported in the confidence intervals and standard errors. (Tr. 2254:3–2256:11.) Indeed, in the absence of any precinct in Santa Monica in which Latino voters exceed 41 percent of the voters, there is no logical bound between 0 percent support for a candidate and 100 percent support for a candidate that can be applied. (Tr. 2216:1-11.)
15:10-16	These cases are all distinguishable. In *Fabela* and *Benavidez*, the plaintiffs could satisfy the first *Gingles* precondition. (*Fabela*, 2012 WL 3135545, at *4–6; *Benavidez*, 638 F.Supp.2d at 713–722.) Under that circumstance, even if there are few or no predominantly Latino precincts, estimates of voting behavior should nevertheless be reasonably accurate where Latinos are numerous and compact enough to account for the majority of eligible voters in a constitutionally permissible hypothetical district. That is not the case here, and so the estimates are subject to an unusual degree of uncertainty. In *Perez*, the plaintiffs could not satisfy the first *Gingles* precondition, but came quite close, with a Latino voting-age population (not citizen-voting-age population) of 55 percent. (*Perez*, 958 F.Supp. 1196.) Even under those circumstances, where Latinos were far more numerous and more compact than in this case, the court expressed concerns about "the reliability of the statistical evidence plaintiffs presented." (*Id.* at 1220.) Those concerns are heightened here and call for even greater suspicion as to whether many estimates are meaningful.
15:16-20	Dr. Lewis's report and testimony at trial did not ask the Court to disregard ecological regression and ecological inference estimates (Tr. 2243:17-20), but rather sought to make the Court aware that the estimates provided by these statistical methodologies are plagued by limitations that are not otherwise accounted for. (Tr. 2038:19-2039:10; 2254:3-2256:11; 2042:16-20; 2259:26-2267:23.) These limitations make the estimates provided by the ecological regression and ecological inference models less certain than indicated by their reported.
15:20–16:2	Dr. Lewis's analysis in his report and at trial identified a limitation of the use of Spanish-surname matching to identify the set of Latino voters for purposes of applying ecological regression analysis. Dr. Lewis explained that the application of Spanish-surname matching can introduce a skew into the ecological regression data which exaggerates the differences in Latino voter support and non-Latino voter support for a particular candidate. Such a skew suggests that the confidence intervals and standard errors reported by the ecological regression model may be too small. (Tr. 2042:16-20; 2259:26-2267:23.)

16:3-6	Dr. Lewis's application of ecological regression and ecological inference to estimate Democratic party registration, and his comparison of those estimates to known figures, provides a real-world demonstration of the inaccurate estimates that can be produced by the application of these statistical methodologies to estimate the behavior of the electorate in Santa Monica. (Tr. 2243:27-2258:3.) There is no valid basis for refusing to consider this demonstration, and *Luna v. County of Kern* (E.D. Cal. 2018) 291 F. Supp. 3d 1088 does not provide one.
16:6-12	Dr. Lewis's analysis clearly demonstrates that the statistical methods accepted by federal courts in Section 2 cases are subject to additional limitations of reliability when employed in jurisdictions such as Santa Monica, where the minority population at issue is small and integrated throughout the City. These additional limitations are not reflected in the confidence intervals or standard errors reported by the statistical models and, therefore, the analysis of the results to these models should take into consideration the additional level of uncertainty that has not been reported. (Tr. 2038:19-2039:10; 2254:3-2256:11; 2042:16-20; 2259:26-2267:23.)
16:13–17:4	This badly mischaracterizes the argument made by the City in its closing brief. The City did not adopt the "mechanical approach" rejected by the Ninth Circuit in the *Ruiz* case, and expressly did consider the order of preference assigned by voters to particular candidates. The City followed a *three-step* approach in identifying Latino-preferred candidates, and did not stop, as plaintiffs appear to suggest, at the first step—namely, determining who would have won had the election been held only among Latino voters. Plaintiffs have deliberately omitted the rest of the City's analysis, which acknowledges that a minority group might in some cases have a meaningfully and measurably greater preference for one or more of the candidates who would have prevailed if members of that group were the only voters: Identifying all the candidates who received sufficient votes from the relevant minority group is not the end of the analysis, however, because sometimes that group might prefer one or more of those candidates more strongly than others. For that reason, courts have held that it is error to "treat[] as 'minority-preferred' successful candidates who had significantly less [minority] support than their unsuccessful opponents." (*N.A.A.C.P., Inc. v. City of Niagara Falls* (2d Cir. 1995) 65 F.3d 1002, 1017.) Conversely, "if the unsuccessful candidate who was the first choice among minority voters did not receive a 'significantly higher percentage' of the minority community's support than did other candidates . . . , then the latter should also be viewed . . . as minority-preferred candidates." (*Levy v. Lexington Cty.* (4th Cir. 2009) 589 F.3d 708, 716; see also *Niagara*, 65 F.3d at 1018.) Finally, to ensure that candidates with only tepid minority support do not count in the *Gingles* analysis, some courts hold that candidates cannot be deemed minority-preferred unless they win at least 50% of the minority group's votes. (E.g., *Niagara*, 65 F.3d at 1019; see also *Lewis*, 99 F.3d at

	614 [candidates receiving less than 50% of minority vote deemed preferred only given further evidence].) Plaintiffs are thus attacking a straw man. Additionally, it is misleading to state that Latino voters had a clear "first" or "second" choice in any election because, as plaintiffs' experts admitted, ballot analysis cannot reveal voters' order of preference. A Latino voter voting for three candidates may strongly prefer one of them over the other two, but it is impossible to discern as much. (See, e.g., Tr. 774:14-25, 3175:9–3176:26.) As for plaintiffs' other authorities and parentheticals: • The race of the candidate is irrelevant so long as the candidate is preferred by the minority group at issue. Latino-preferred candidates consistently win Council elections. And even if the race of the candidate were relevant, it is false that Latino candidates are unable to win election in Santa Monica, as both Tony Vazquez and Gleam Davis have done so (in each case multiple times). • Plaintiffs omit key language from the sentence in *Smith* that immediately precedes the one they quote: "black citizens are numerous enough to have a clear majority in a single-member district." (687 F.Supp. 1310, 1318.) Indeed, that would of necessity be true in each of the Section 2 cases plaintiffs cite, because the first prong of *Gingles* makes this a prerequisite for Section 2 claims. That fact stands in sharp contrast to the demographic facts here. In this case, it is impossible to draw any district in which Latino voters would account for more than 30% of eligible voters.
17:4-21	It is unclear from plaintiffs' statements or citations and accompanying parentheticals exactly what they mean by a "more holistic approach that accounts for the political realities of the jurisdiction." The meaning may be revealed by 17:12-16—plaintiffs argue that the Court should take into account the races of the candidates and the order of preference of minority voters, especially where there is "a paucity of serious minority candidates willing to run in the at-large system." As discussed above, the City contends that the race of a candidate is irrelevant to the analysis; what matters is whether the candidate is preferred by voters of the relevant minority group. But the City has proposed a three-step approach to identifying preferred candidates that *does* account for the order of Latino voters' preferences. Plaintiffs cannot show that white bloc voting usually causes the defeat of Latino-preferred candidates identified using this three-step approach because, even if one focuses solely on the seven elections chosen by plaintiffs because they involved at least one Latino-surnamed candidate, such candidates generally *win*. Those candidates must be identified in three steps: Step 1: Which candidates would have won had Latinos been the only voters? Under this rudimentary analysis, it is undisputed that "Latino-preferred" candidates won 73% of the time from 2002 to 2016, and 62% of the time in plaintiffs' seven cherry-picked elections. (Ex. 1652 at 72,

	Ex. 1653A at 21–30, Tr. 2313:2-10, 2315:23–2316:1 [Dr. Lewis's ER estimates]; see also Ex. 1652A at 2, Ex. 1653A at 43–47, Tr. 2319:20–2320:6 [Dr. Lewis's EI estimates]; see also Ex. 272, Ex. 275, Ex. 278, Ex. 281, Ex. 284, Ex. 287, Ex. 290 [Dr. Kousser's ER estimates].) Two of those Latino-preferred candidates, Tony Vazquez and Gleam Davis, also happen to be Latino. Step 2: If the candidate who won the most Latino votes was unsuccessful, was Latino support for that candidate "significantly" higher than for other Latino-preferred candidates? This analysis eliminates seven candidacies in plaintiffs' seven favored elections: **1994**: none eliminated (three candidates, including Vazquez, have point estimates over 100%; for the sake of simplicity and consistency, and to give plaintiffs the benefit of any doubt, all point estimates taken from Dr. Kousser's analysis) **1996**: Bloom (52%) eliminated, as three candidates have point estimates near or above 100% **2002**: O'Connor eliminated (Aranda arguably wins significantly more votes, and loses; but Aranda is not meaningfully or significantly more preferred than McKeown) **2004**: Bloom (55%), Hoffman (40%), and Genser (39%) eliminated because Loya wins a significantly higher share of Latino votes (106%) and loses **2008**: none eliminated (top four candidates have point estimates between 21% and 55%) **2012**: none eliminated (Latinos' top four candidates all win) **2016**: O'Day and Davis eliminated (de la Torre and Vazquez win a significantly higher share of votes, and de la Torre loses) (Ex. 272; Ex. 275; Ex. 278; Ex. 281; Ex. 284; Ex. 287; Ex. 290) Step 3: Disregard candidates who earned too few Latino votes. This removes Piera-Avila, Bloom, and Rubin in 2008 (who all fell short of the 50% threshold—at least under Dr. Kousser's estimates, but not, in the case of Bloom, under Dr. Lewis's). (Ex. 284.) Thus, in the seven elections involving Latino-surnamed candidates on which Plaintiffs have relied, the Latino-preferred candidates are: Vazquez, O'Connor, and Finkel in 1994; Feinstein, Olsen, and Genser in 1996; Aranda and McKeown in 2002; Loya in 2004; Genser in 2008; Vazquez, O'Day, Winterer, and Davis in 2012; and de la Torre and Vazquez in 2016. (Ex. 272; Ex. 275; Ex. 278; Ex. 281; Ex. 284; Ex. 287; Ex. 290.) Next, the Court must ask whether any of these candidates were defeated by white bloc voting. At least one losing candidate, Tony Vazquez in 1994, was not. Whites did not vote cohesively as a bloc; they split their votes almost evenly across their top five candidates. Vazquez was (by point estimates) whites' third choice—meaning that if whites had been the only voters, Vazquez would have *won*. (Ex. 272 [point estimate of white support for Vazquez third-highest, at 34.9%]; Tr. 1337:10-25, 2308:11-16 [if only Latinos had voted, Vazquez, Finkel, and O'Connor would have won]; Tr. 1339:24–1340:25, 2309:17-26, 2312:2-13, 3053:23–3054:19 [no statistically significant difference in white vote for

	Holbrook, Ebner, Vazquez, and Finkel]; Tr. 3053:9-22 [no statistically significant difference in Latino vote for O'Connor, Vazquez, and Finkel].) He lost not because of white bloc voting, but because he attracted scarcely any votes from Asian and African-American voters (point estimates of - 209.4 and 19.2, respectively). (Ex. 272.) Vazquez's defeat is thus not evidence of legally significant RPV. (*Nipper v. Smith* (11th Cir. 1994) 39 F.3d 1494, 1533 ["to be actionable, the electoral defeat at issue must come at the hands of a cohesive white majority"].) Analyzed properly—i.e., both horizontally *and* vertically—Dr. Kousser's tables show that just 3 of 16 Latino-preferred candidates were even arguably defeated by white bloc voting in the past 22 years: Aranda (2002), Loya (2004), and de la Torre (2016). (Ex. 272; Ex. 275; Ex. 278; Ex. 281; Ex. 284; Ex. 287; Ex. 290.) And for reasons explained elsewhere in these objections (in response to 12:3–5 & fn. 10), which are incorporated by reference here, the Court should disregard de la Torre's defeat as a "special circumstance." That is far from "usual" defeat "at the hands of a cohesive white majority." In addition to being wrong, plaintiffs' argument, even if accepted, would not assist them. Plaintiffs cannot show usual defeat on account of white bloc voting even if the Court accepts their position that it must consider the race of the candidates and narrows its focus not just to the elections selected by plaintiffs, but to the Latino-surnamed candidates who ran in those elections. Alvarez, Gomez, and Duron were not Latino-preferred, and voting for Alvarez and Duron was not racially polarized in any event. (Ex. 275 [Alvarez]; Ex. 287 [Gomez and Duron].) Vazquez won twice, and was not defeated by white bloc voting in 1994. Even if the Court does not discount Piera-Avila or de la Torre, plaintiffs have shown the defeat of a Latino-surnamed candidate through white bloc voting at most four of ten times. (Ex. 272; Ex. 275; Ex. 278; Ex. 281; Ex. 284; Ex. 287; Ex. 290.) Dr. Kousser admitted that if, as the law requires, plaintiffs must prove *both* that voting was racially polarized and that the Latino-preferred candidates usually lost as a result, then plaintiffs fall short of that standard. (Tr. 1324:4-19, 1326:7–22, 1353:19–1355:7.) This is dispositive. (E.g., *Askew v. City of Rome* (11th Cir. 1997) 127 F.3d 1355, 1381; *Perez v. Abbott* (W.D.Tex. 2017) 253 F.Supp.3d 864, 899.) Finally, plaintiffs have yet to define what a qualifies a candidate as "serious," and how "seriousness" factors into the CVRA analysis, which makes any commentary on "seriousness" irrelevant. Nor, for that matter, have they identified any record evidence demonstrating that Latinos are somehow put off of running for City Council under the present at-large system, as they appear to imply. This commentary and the *Westwego* citation are therefore irrelevant.
17:22–25	The City agrees that a minority group can prefer a non-minority candidate. Although plaintiffs concede as much here, they do not account for that possibility in the rest of their analysis, focusing exclusively on the performance of Latino or Latino-surnamed candidates. The City agrees that Latinos can prefer more than one candidate in a multi-seat plurality at-large election, but plaintiffs again do not account for that possibility in the rest of their analysis, in which they appear to

	state that only one candidate was preferred in each election they identify as relevant. As noted above in response to 16:13–17:4 and 17:4-21, which objections are incorporated by reference here, plaintiffs are attacking a straw man. The City set out a very clear three-part test for identifying Latino-preferred candidates. That test is consistent with federal case law that is incorporated in the CVRA.
17:25–18:1	The City here incorporates by reference its objections concerning the ambiguity and relevance of "seriousness." Those objections were noted, among other places, in response to 11:2-8 and 17:4-21. The City also here incorporates by references its objections to plaintiffs' inaccurate statements that Latino candidates "have been overwhelmingly supported by Latino voters, receiving more votes from Latino voters than any other candidates," and that despite such support, "those candidates generally still lose." Those objections were noted, among other places, in response to 8:1-4. Finally, to the extent that plaintiffs are suggesting that there were "unusual circumstances" in any election—presumably a variant on the phrase "special circumstances" from the third precondition in *Gingles*—plaintiffs have waived any such argument by not raising it in their closing briefing. The City noted such a waiver in its own closing brief (p. 8, fn. 8).
18:1-5	The full *Gingles* standard—that is, the three preconditions—is set forth on pages 48 through 51 of the Supreme Court's opinion. When courts cite *Gingles*, and they often do, they almost always cite the preconditions written on those pages. Courts do not cite the language quoted here by plaintiffs in an effort to lighten their burden. In fact, of the 840 cases citing *Gingles*, only two quote this language—one in a concurring opinion and the other in a 16-line block quote. The Court should, as all other courts do, follow the *Gingles* preconditions as set out in pages 48 through 51, along with the federal cases following *Gingles* that operationalized the preconditions and answered many of the questions left unresolved by *Gingles*. Further, the quotation is misleading, because it suggests that the Court should confine its analysis to those candidates who are themselves "black." But Justice Brennan clarified what he meant by "black candidate" in the portion of his decision joined by a plurality of the Court—that it was a kind of shorthand used "as a matter of convenience," and that what really matters is "the *status* of the candidate as the *chosen representative of a particular racial group*, not the race of the candidate." (478 U.S. at 68.)

Section III.C: "The Qualitative Factors Further Support a Finding of Racially Polarized Voting and a Violation of the CVRA." (page 18, line 6 through page 21, line 6)

The CVRA makes certain additional factors potentially, but not necessarily, relevant to the liability analysis. None of those factors supports liability in this case.

First, plaintiffs have not proven a history of discrimination in Santa Monica. Instead, they have attempted to incorporate by reference the findings of a 30-year-old opinion concerning Los Angeles County generally.

Second, the City's electoral system is free of all the electoral devices that have in other municipalities sometimes resulted in or at least contributed to the under-representation of minorities, including a majority-vote requirement, designated posts, and off-cycle elections.

Third, although plaintiffs rely on the Census to demonstrate that white residents are generally better-educated and higher-earning than Latino residents—a trend not unique to Santa Monica—plaintiffs have not demonstrated any connection between such disparities and Latinos' ability to participate in the political process. To the contrary, City elections are open to all comers, and candidates have been able, irrespective of their own race or ethnicity, to raise money and spread awareness of their campaign platforms.

The City's elections are notably free of "racial appeals." Plaintiffs cite a 1994 *Los Angeles Times* article that is not in evidence. The only record evidence of any other such appeal cited by plaintiffs is an allegation by plaintiff Maria Loya that in 2004 she was asked whether she was interested in representing all of Santa Monica or only Latinos. Even if this self-serving assertion were true, it would not demonstrate any pattern of racial appeals sufficient to be of any probative value, especially in comparison to the recent repeated success of Latino and other minority candidates in City Council, Rent Control Board, School Board, and College Board elections, as well as plaintiffs' own expert's conclusion that an election in the 1970s involving multiple candidates of color was free of any racial appeals. (In that year, an African-American was elected to the Council, and a Latino was elected to the School Board.)

Finally, the City has been consistently supportive of and responsive to its Latino residents. More than most cities across the country, the City of Santa Monica actively promotes the welfare of its residents, offering a wide range of financial, civic, and social programs. Many of those programs, including the City's strong commitment to rent control and affordable housing, are aimed at maintaining the City's diversity and ensuring that residents are not forced to move on account of rising rents.

Plaintiffs contend that the City has been inadequately responsive to Latinos because it has "placed" many "elements of the city that most residents would want to put at a distance," including "the freeway" and "a park that continues to emit poisonous methane gas," in the Pico Neighborhood. This rhetoric is both false and dangerous in many respects. As an initial matter, the Pico Neighborhood is not a proxy for Latinos. Approximately two of every three Latino residents in Santa Monica live outside of the Pico Neighborhood, and the largest group within the Pico Neighborhood remains non-Hispanic whites. Second, even if the Pico Neighborhood were a proxy for Latinos, the City has spent enormous sums and devoted great effort to beautifying and otherwise improving that neighborhood, including by renovating Virginia Avenue Park and opening the Pico Library. Third, and perhaps most importantly, plaintiffs' stories about "undesirable elements" are not supported in the record and are downright false. For example, the City did not control the placement of the 10 freeway or the train maintenance yard, and methane gas in Gandara Park is not dangerous or poisonous, but closely treated and monitored in accordance with all applicable state and federal regulations. Indeed, that there is methane in the park at all is a function not of any decision to burden a particular neighborhood or group of residents, but of a historical accident. Before there were any residences in the area, that land was devoted to a large clay mine and brick plant. The mine was later filled in with construction waste—again before the area turned residential.

Objectionable portion of PSOD	Specific objections/responses
18:14-17	The City disagrees that any of these factors "support[s] a finding of racially polarized voting in Santa Monica and a violation of the CVRA. In each case, plaintiffs' evidence fails to prove their point and, in any event bears no causal relationship to Latinos' participation in the political process.

18:17–19:2	The argument that plaintiffs need not prove a history of discrimination in this case, which concerns the City of Santa Monica, because a history of discrimination was proven almost 30 years ago in another case concerning the County of Los Angeles is not only wrong, but absurd. Plaintiffs give the Court no reason to engage in what amounts to nonmutual offensive collateral estoppel. That Santa Monica is located within L.A. County does not mean it shares the practices and attitudes of other municipalities within that county. Moreover, forcing Santa Monica to change its election practices based on discriminatory practices 30 years ago in Los Angeles County would make no sense.
19:2-7	Plaintiffs presented no evidence of a history of official discrimination in Santa Monica. Their only City-specific evidence was that the beach was once segregated—but that was by tradition, not law. (Tr. 3904:14-24.) Plaintiffs introduced no evidence of racial covenants *in Santa Monica*, which have not been legally enforceable for 70 years in any event. (*Shelley v. Kraemer* (1948) 334 U.S. 1.) And the City was not responsible for a *DOJ* repatriation program or a *statewide* English-literacy requirement. Finally, Proposition 14 was not a pure test of racial attitudes, as plaintiffs suggest. As noted in one contemporary article by Eleanor Fulkerson, the President of the Fair Housing Council of Santa Monica, Proposition 14 was passed in large part thanks to misleading advertising that appealed to voters on non-racial grounds: "In a well-financed campaign, using demagogic appeal to freedom and property rights, the public can be led astray." (Ex. 1817 at 1462; see also Tr. 1575:8–1576:18.) Ms. Fulkerson and others in Santa Monica supported fair housing in general and the Rumford Act in particular. (*Ibid.*) Further, Dr. Kousser did no regression analysis on Proposition 14 to determine whether there was any correlation between support for Proposition 14 and support for at-large elections. (Tr. 1574:3-21.) Nor was Dr. Kousser aware of any member of the Santa Monica City government supporting Proposition 14. (Tr. 1575:4-10.)
19:10-11	The City has stressed that fact its elections are free of the devices that have been found to dilute minority votes in other jurisdictions because that fact demonstrates that the City's electoral system is that much more open and inclusive. All of the dilutive mechanisms that the City's electoral system could have, but does not—for example, it does not use designated posts, prohibit bullet voting, require a majority of votes to win, or hold elections except at the same time as gubernatorial and presidential elections—cast doubt on plaintiffs' assertion that the City's elections were designed to dilute Latino voting power or have had that effect.
19:12-16	Plaintiffs did not introduce at trial, and have not identified in the PSOD, any evidence that the City's staggered elections have diluted minority voting power. Citing a case observing that staggered elections "may have a discriminatory effect under some circumstances" is not the same as proving it based on evidence in this case. Further, there are sound, nondiscriminatory reasons to stagger elections—e.g., reducing confusion and uninformed decision-making associated with voting for seven candidates at once, and giving voters the opportunity to make their voices heard every two years instead of every four. (Ex. 127 at 25, Tr. 1701:18-24, 3594:25–3595:4 [concerns, including on the part of the Charter Review Commission, about City holding elections only every four years]; Tr.

	3804:3-6 [confusion]; see also Tr. 2886:22-24 [most cities stagger their elections].)
19:20–20:4	Plaintiffs' generic assertions about education and income disparities do not demonstrate that Latinos' participation in the political process is hindered. The barriers to entry in local politics are low, and the City provides resources to all candidates. (E.g., Tr. 4319:21–4322:3 [running requires pulling papers, paying a $25 fee, and securing 100 signatures, and the City provides different ways "for people to get their message out for free," including through the City's website and a spot on public-access TV].) Even if Latinos are on average less wealthy than whites, there is no evidence that Latino candidates can raise money only or principally from other Latinos. Latino candidates have raised large sums of money in Council and other elections, and many have won. (E.g., Tr. 196:20-22 [plaintiff Maria Loya spent $34,000 on a College Board campaign]; Ex. 1202, Tr. 2509:23-26 [Oscar de la Torre spent between $14,000 and $35,000 on each of his School Board campaigns]; Tr. 2710:11-15 [Craig Foster spent $93,000 on a School Board campaign]; Tr. 2710:16-26 [Nimish Patel spent a similar amount on his own School Board campaign]; Tr. 2711:2-4 ["typical" amounts spent on School Board campaigns are $40,000 to $50,000]; Ex. 1387 at 3 [de la Torre victorious in 2002]; Ex. 1389 at 3 [Maria Leon-Vazquez, Jose Escarce, and Margaret Quinones-Perez victorious in 2004]; Ex. 1390 at 4 [de la Torre victorious in 2006]; Ex. 1391 at 3 [Leon-Vazquez, Escarce, and Quinones-Perez victorious in 2008]; Ex. 1392 at 3–4 [de la Torre and Gleam Davis victorious in 2010]; Ex. 1393 at 3 [Leon-Vazquez, Escarce, Tony Vazquez, and Davis victorious in 2012]; Ex. 1394 at 4 [de la Torre and Steve Duron victorious in 2014]; Ex. 1557 at 3–8, 15–21 [Quinones-Perez, Vazquez, and Davis victorious in 2016].) And none of the education or income disparities to which plaintiffs point would be any different if the City had used districts for Council elections. The achievement gap, for example, has nothing to do with the Council. The School Board—which has had between 1 and 3 Latino members, including de la Torre, for the last 25 years—has exclusive authority over City schools. (Tr. 4209:6-15, 4315:12–4316:13 [Council does not operate schools]; Ex. 1399 at 3 [Margaret Franco reelected in 1996]; Ex. 1397 at 3 [Escarce elected in 2000]; Ex. 1387 at 3 [de la Torre elected in 2002]; Ex. 1389 at 3 [Escarce reelected, Leon-Vazquez elected in 2004]; Ex. 1390 at 4 [de la Torre reelected in 2006]; Ex. 1391 at 3 [Escarce and Leon-Vazquez reelected in 2008]; Ex. 1392 at 3 [de la Torre reelected in 2010]; Ex. 1393 at 3 [Leon-Vazquez and Escarce reelected in 2012]; Ex. 1394 at 4 [de la Torre reelected in 2014]; see also Tr. 4209:16-25 [noting people of color on School Board].) The Court should disregard plaintiffs' speculation that any achievement gap "may further contribute to lingering turnout disparities."
20:6-15	The *Los Angeles Times* article and the quote it contains were never admitted into evidence and should not appear in the Court's Statement of Decision. Moreover, the racist appeal cited in the article came in the 1994 election, more than 24 years ago; 1994 also saw the City select as Mayor Pro Tem an Asian-American Councilmember who had been elected in 1992.

	Plaintiffs suggest that there is a history of more recent racial appeals, but give only a single example—from the plaintiff, divorced from any context. Plaintiffs' limited allegations of racial appeals are outweighed by the lack of evidence of any such appeals in any other elections, including but not limited to Vazquez's 1990, 2012, and 2016 victories, as well as Nat Trives's 1971 and 1975 victories. (E.g., Tr. 1581:3-8, 3671:18-25, Ex. 1315 at 21 [no racial appeals for defeat of Prop. 3 in 1975]; Tr. 3672:12-23 [Outlook endorsed multiple minority candidates in 1975, including Trives]; Tr. 4041:11-16 [Jara recalled no racial appeals in the 2004 election cycle].) It would be unreasonable to conclude that a few comments allegedly made 15 years ago to a single Latino candidate (or an advertisement run more than 24 years ago) would cause other Latinos to think twice about running for office; indeed, there is no record evidence that any Latinos other than plaintiff herself heard such comments. Moreover, the record is replete with more recent victories by Latino and other minority candidates in elections for City Council (Vazquez in 2012 and 2016; and Davis in 2010, 2012, and 2016), Rent Control Board (Duron in 2014), School Board (de la Torre in 2006 2010, 2014, and 2018; Leon-Vazquez in 2004, 2008, and 2012; and Escarce in 2004, 2008, and 2012), and College Board (Quinones-Perez in 2004, 2008, and 2016; Barry Snell in 2014 and 2018; and Sion Roy in 2018). (With respect to the 2018 election results, which postdated the trial, please refer to the City's contemporaneously filed Request for Judicial Notice.)
20:17–21:6	Plaintiffs' evidence of a supposed lack of responsiveness ignores both historical context and the fact that the Pico Neighborhood is not a proxy for Latinos; two-thirds of Latinos live outside of that neighborhood, and the largest group in the Pico Neighborhood remains non-Hispanic whites. (Tr. 1936:25–1937:2; 375:19-25.) *Methane and City Yards*: The land where Gandara Park and the City Yards are located was first devoted to industrial use (clay-mining and brickmaking) well over a century ago, long before residences were built in the area. (Tr. 4182:19–4185:1 [describing history of area], 4435:18-23 ["The reason that those items happen to be in the Pico neighborhood doesn't have anything to do with a decision that was made about let's try and impose a burden on one particular neighborhood. That was an industrial area where it was appropriate to do that kind of work."].) And laintiffs' narrative about "poisonous" gas is irresponsible and false. The City has for decades hired experts to oversee a gas-abatement program and provide regular reports to the Council and regulatory authorities; the City has remained in compliance with all applicable regulations. (Tr. 4197:26–4202:21 [City has "continually monitor[ed] the park" through expert consultants "for at least 20 years"; experts operate and maintain abatement systems and provide regular reports to the Council and regulatory authorities; City has never been out of compliance with regulations]; see also Tr. 3470:28–3471:4, 3472:20-22 ["regular monitoring"]; Tr. 3474:6-16 [Council's role is to provide "policy oversight," not to hire staff and directly oversee monitoring].) *Train maintenance yard*: The placement of the Expo maintenance facility in the same historically industrial area was out of the Council's hands and replaced another private commercial yard at the same location. (Tr. 4293:10-18 [Metro directly acquired former Verizon maintenance yard,

	and "once they made the decision to do that private deal, there was nothing the City could do"].) *Hazardous waste collection and storage*: Residents' waste is brought to the City Yards, but those materials are then made safe for transfer by a private company and transferred out of the City. (Tr. 4150:12–4151:27, 4152:10–4153:6.) There is no long-term hazardous-waste-storage facility in Santa Monica. (Tr. 4160:3-18.) The City's collection of hazardous waste, at residents' request, and safe transfer out of the City are performed in order to improve the safety of all City residents. *Freeway*: The City did not decide where to locate the 10 freeway. The State of California did. Further, the Pico Neighborhood is not the only neighborhood burdened by its proximity to a freeway. The Pacific Coast Highway runs along the west side of the City and an entirely different set of neighborhoods and people than the 10 freeway. (See Tr. 3597:24-28.) Further, plaintiffs' argument that through the freeway the City has imposed a particularly heavy burden on minorities in the Pico Neighborhood is demonstrably false. Not only does City Councilmember Terry O'Day live in the Pico Neighborhood, a mere 150 feet from the freeway, but City Hall itself is within 100 feet of the freeway. (See Tr. 3599:10-26.) *Commissions*: Plaintiffs also have not shown that Latinos have *applied and been rejected* from positions on any commissions—an element of a prima facie case of racial discrimination in hiring. (*Tex. Dep't of Comm. Affairs v. Burdine* (1981) 450 U.S. 248, 253 & fn. 6.) *More evidence on the Pico Neighborhood*: Finally—and to the limited extent that Pico Neighborhood-related evidence is relevant—the Pico Neighborhood does not shoulder all the City's "burdens." There are other City yards in other neighborhoods, including a 7-acre bus lot downtown and yards on the PCH, in Mid-City, and in Sunset Park, as well as firehouses throughout the City. (Tr. 3598:11–3599:5.) Plaintiffs also fail to mention the tens of millions of dollars that the City has invested in Pico in recent years (e.g., on projects such as Virginia Avenue Park, Pico Library, Ishihara Park, MANGo, and Memorial Park, as well as City-sponsored vocational and educational programs). (Tr. 234:5–235:22, 2620:13–2625:10, 3457:3-9, 3463:5-16, 3464:3-10, 4027:24–4029:18, 4274:1–4276:13, 4283:24–4284:27, 4285:24–4288:27 [Virginia Avenue Park]; Tr. 228:24–229:28, 2626:21-24, 4276:14–4283:18, Ex. 1841 [Pico Library]; Ex. 1661 at 2–5, Tr. 226:27–227:15, 228:21-23, 2635:18-24, 2638:21-28, 2636:8-10, 2637:12–2639:22 [Ishihara Park]; Tr. 3399:15–3402:8, 4258:17–4262:25 [MANGo]; Tr. 3458:2-13 [Memorial Park]; Tr. 2633:11–2634:24, 4166:24–4167:15 [vocational programs at City Yards].) Plaintiffs also overlook the many City-funded programs that benefit lower-income Pico residents, including Latinos and non-Latinos, (e.g., affordable housing, strict rent-control laws, and direct assistance to low-income tenants). (Tr. 3564:15–3565:5 [strategic planning process to maintain diversity through affordable housing, rent control, and direct subsidies]; Tr. 4208:16–4209:5 [direct-subsidy program]; Ex. 1922, Tr.

	4218:1–4221:16 [rent control and affordable housing]; see also Tr. 3563:27–3564:7, 4213:5–4217:2 [goal is to "reduce the pressure on existing housing units" with new construction that does not displace current residents].)

Section III.D: "The At-Large Election System Dilutes the Latino Vote in Santa Monica City Council Elections." (page 21, lines 7-22)

It was plaintiffs' obligation to prove that the City's current electoral system dilutes the voting power of Latinos. Put differently, plaintiffs needed to show that some alternative electoral system would allow Latinos to elect candidates of their choice. They failed to do so, because Latino voters are too few in number and too integrated throughout the City for either a districted system or a different at-large system to enhance their voting power. Indeed, plaintiffs' preferred purported remedy, a district in which Latinos account for just 30 percent of Latino voters, would put Latino voters in precisely the situation in which they find themselves now—reliant on "crossover" voters from other racial and ethnic groups to support candidates of their choice for those candidates to succeed.

Plaintiffs' own expert unsurprisingly could not identify a single judicially created district where the relevant minority group's share of eligible voters was as low as in plaintiffs' proposal. Because neither that proposal nor any other alternative electoral system would enhance Latino voting strength, plaintiffs have not satisfied the CVRA.

Objectionable portion of PSOD	Specific objections/responses
21:9-10	Vote dilution is a separate element of a CVRA claim. A public entity violates the CVRA only if its at-large method of election "*impairs* the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election, *as a result of the dilution* or the abridgment of the rights of voters who are members of a protected class." (§ 14027, italics added.) Courts interpreting similar language in Section 2 of the FVRA require proof of *harm* (vote dilution) and *causation* (a connection between the harm and the electoral system). (E.g., *Gingles*, 478 U.S. at 48, fn. 15; *Gonzalez v. Ariz.* (9th Cir. 2012) 677 F.3d 383, 405; *Aldasoro v. Kennerson* (S.D.Cal. 1995) 922 F.Supp. 339, 369, fn. 10.) California courts have stated, but not yet held, that the CVRA similarly demands proof of vote dilution caused by an election system. (*Rey v. Madera Unified Sch. Dist.* (2012) 203 Cal.App.4th 1223, 1229; *Jauregui v. City of Palmdale* (2014) 226 Cal.App.4th 781, 802; *Sanchez v. City of Modesto* (2006) 145 Cal.App.4th 660, 666.)

21:10-22	First, the standard proposed by the City—"that some alternative method of election would enhance Latino voting power"—is the appropriate standard. To prove vote dilution, a plaintiff must show that a protected class would have greater opportunity to elect candidates of its choice under some other electoral system, which serves as a "benchmark" for comparison. (See, e.g., *Reno v. Bossier Parish Sch. Bd.* (1997) 520 U.S. 471, 480; *Holder v. Hall* (1994) 512 U.S. 874, 880 (plurality); *Gingles*, 478 U.S. at 50, fn. 17.) "[I]n order to decide whether an electoral system has made it harder for minority voters to elect the candidates they prefer, a court must have an idea in mind of how hard it 'should' be for minority voters to elect their preferred candidates under an acceptable system." (*Gingles*, 478 U.S. at 88 (O'Connor, J., concurring).) See also fn. 4 above. The "protected voting group" should have "a voting opportunity that relates favorably to the group's population in the jurisdiction for which the election is being held." (*Smith v. Brunswick Cty., Va., Bd. of Supervisors* (4th Cir. 1993) 984 F.2d 1393, 1400.) But the key word is "opportunity"—"while a plan must provide a meaningful 'opportunity to exercise an electoral power that is commensurate with its population,' that is not the same as a guarantee of success"; to the contrary, "a necessary part of equal participation is the possibility of a loss." (*United States v. Euclid City Sch. Bd.* (N.D.Ohio 2009) 632 F.Supp.2d 740, 752.) "[T]he ultimate right of § 2 is equality of opportunity, not a guarantee of electoral success for minority-preferred candidates of whatever race." (*Johnson v. De Grandy* (1994) 512 U.S. 997, 1014, fn. 11.) Where comparison to any reasonable benchmark reveals that a protected class's votes are *not* being diluted—i.e., where that class *already has* a voting opportunity that relates favorably to its population—there is no legal requirement to jettison an at-large system; "there neither has been a wrong nor can be a remedy." (*Emison v. Growe* (1993) 507 U.S. 25, 40–41.) Levitt agreed as much. (Tr. 3080:21-26, 3085:28–3086:9.) Any requirement to abandon an at-large method of election despite a lack of vote dilution would violate the federal constitution. (See, e.g., *Bartlett*, 556 U.S. at 21–22; U.S. Const., am. XIV.) Second, the PSOD does not explain how any evidence presented by plaintiffs demonstrates that an alternative electoral system would enhance Latino voting strength. A conclusory assertion is not enough. Plaintiffs must prove the existence of vote dilution, and they have not done so, because they have not identified any alternative method of election that would enhance Latino voting power. The parties agree it is impossible to draw a majority-Latino district in the City. (Tr. 395:19–396:6 [Latino CVAP in Mr. Ely's proposed "Pico" district is 30%]; Tr. 1931:1-1935:21 [arithmethic upper limit of Latino share of CVAP in any district, however configured, is well under 50%].) Plaintiffs have argued that the CVRA, unlike federal law, permits plaintiffs to show vote dilution in some other way. Their expert, David Ely, proposed a "Pico Neighborhood District" with a Latino CVAP of 30%. (Tr. 283:6-12 [Mr. Ely relying on CVAP figures]; Ex. 162, Ex. 163, Ex. 1209 at 10, Tr. 288:15-22 [Latino CVAP in Mr. Ely's proposed district is 30%].) He

	estimated that in three elections (1994, 2004, and 2016), a Latino candidate would have won the most votes in that district. (Ex. 1209 at 12–14 [Ely declaration explaining analysis]; Ex. 164, Tr. 290:24–291:6 [1994]; Ex. 166, Tr. 292:13–293:2 [2004] Ex. 168, Tr. 294:27–295:26 [2016].) There are several major problems with this analysis: (1) There is no precedent in case law or expert practice for Ely's methodology. The Latino CVAP of his proposed district is just over half the bare majority required for a federal claim to be cognizable. Because this figure is so low, Ely could not presume that Latino voters would be able to elect candidates of their choice; he had to invent a new test—estimating vote totals for each candidate in his district under three calculation methodologies. (Ex. 1209 at 12–13; Tr. 289:14–290:23.) He admits that this test has no value in determining who would have actually won in his proposed district. (Tr. 440:4-12, 459:20–460:7; see also Tr. 1614:23-25 [Dr. Kousser admitting that how voters would vote in a districted system is uncertain].) Among other things, the candidates would be different in a districted election, because residency within the district would be a prerequisite of candidacy, and it would likely be necessary to earn a majority of votes to win, such that runoffs might become necessary. (Ex. 159 [map of Council candidates' residences]; Tr. 420:12-20, 460:2-7 [Mr. Ely familiar with districted systems requiring a majority of votes to win and holding runoffs where no candidate secures a majority on the first ballot]; Tr. 430:18–431:10 [Mr. Ely assumed that candidates would need to reside in the district where they run]; Tr. 437:27–438:2, 459:15-19 [candidates would be different in a districted election because of the residency requirement]; 3100:25-28 [Mr. Levitt agreeing that the candidates who run in districted elections tend not to be the same candidates who run in at-large elections].) As a result, for example, Ely's conclusion about the 1994 election is meaningless because Vazquez did not live in the proposed district and therefore could not have won there. (Tr. 3097:15–3098:13.) (2) Latino CVAP in the proposed district is far below the 50% threshold of exclusion for a one-seat election; Latinos alone would be unable to elect candidates of their choice. (Tr. 3134:4-10.) Further, Latinos outside the district would be submerged in overwhelmingly white districts. (E.g., Tr. 1936:25–1937:11, 2942:23–2943:7, 3091:17-23.) Indeed, Mr. Levitt could not identify a single judicially created district with such low minority CVAP anywhere in the country. (Tr. 3092:24–3093:15, 3095:3-22.) If the Court were to find a violation here, this case would be an extreme outlier. Plaintiffs point to *Georgia v. Ashcroft* to justify the creation of an "influence" district with minority CVAP as low as 25% (Br. at 24), but that was a *Section 5* case, *not* a *Section 2* case. The Supreme Court has held that "'the lack of [influence] districts cannot establish a § 2 violation.'" (*Bartlett*, 556 U.S. at 25.) (3) Ely's opinion is outcome-driven and incomplete. He testified on direct examination about only *three* elections (1994, 2004, and 2016). His conclusion about the 2016 election is simply wrong; his

	own numbers show that the purportedly Latino-preferred candidate, de la Torre, would have *lost* under two of three scenarios to O'Day, who has lived in the Pico Neighborhood for 20 years. (Ex. 1304 at 3; Tr. 451:11-23, 3397:6-13.) (And both lost to Vazquez, who does not live there; districts would have robbed voters of their top choice.) But Ely also analyzed four other elections. On cross-examination, Ely claimed that he omitted those from his opinion because they did not meet one of his criteria—that the Latino candidate must receive at least half the number of votes necessary to win citywide. (Tr. 428:6–429:2, 460:20–463:27, 465:2-15.) In fact, in three of the omitted elections, a Latino candidate *did* receive at least that many votes. (Ex. 1399 at 22 [Alvarez received 8,693, more than half of the 12,713 votes won by the fourth-place finisher, Rosenstein]; Ex. 1387 at 14 [Aranda received 6,579 votes, more than half of the 11,164 votes won by the third-place finisher, Holbrook]; Ex. 1393 at 3 [Vazquez received 11,939 votes—enough to win].) Ely did not include those Latino candidates in his analysis because they did not come in first in his Pico district. (Compare Ex. 1304 [Mr. Ely's seven election analyses], with Ex. 1399 [1996 election results], Ex. 1387 [2002 election results], Ex. 1391 [2008 election results], Ex. 1393 [2012 election results]; Tr. 463:25–464:18 [Alvarez received fifth-most votes in hypothetical district in 1996]; Tr. 465:2–466:10 [Aranda received third-most votes in hypothetical district in 2002]; Tr. 466:22–468:7 [Piera-Avila received seventh- or eighth-most votes in hypothetical district in 2008]; Tr. 468:10–471:8 [Vazquez received second- or third-most votes in hypothetical district, even though he was elected in actual at-large election].) In 2012, for example, although Vazquez won citywide in an at-large election, he would not have received the most votes in Ely's district. (Tr. 468:10–471:8; Ex. 1304 at 2; Ex. 1393 at 3.) In each of the four omitted elections, districts would have changed nothing—the top choices in the district prevailed citywide. (Compare Ex. 1304 [Mr. Ely's seven election analyses], with (a) Ex. 1399 [1996 election results; top three vote-getters in the district are Feinstein, Genser, and Rosenstein, who prevailed citywide]; (b) Ex. 1387 [2002 election results; top two vote-getters in the district are McKeown and O'Connor, who both prevailed citywide]; (c) Ex. 1391 [2008 election results; top four vote-getters in the district are Bloom, Genser, Katz, and Shriver, who all prevailed citywide]; and (d) Ex. 1393 [2012 election results; top four vote-getters in the district are Davis, O'Day, Vazquez, and Winterer, who all prevailed citywide].) (4) Because plaintiffs are unable to show that districts would enhance Latino voting power, the Court should not overlook the unrebutted evidence that districts would *dilute* the voting power of African-Americans and Asians. (Tr. 3794:23–3795:11, 3796:20–3797:15.) In 5 of the 7 at-large elections that Dr. Kousser studied, African-Americans' top choice was elected; the current system does not dilute their votes. (Ex. 272 [Ebner]; Ex. 275 [Greenberg]; Ex. 278 [Holbrook]; Ex. 284 [Shriver]; Ex. 287 [Davis]; see also Tr. 3800:14–3801:28 [Dr. Kousser left Asians and African-Americans out of his analysis].)

	Finally, Professor Levitt's analysis of alternative at-large systems likewise does not prove vote dilution. His analysis depends not on CVAP, but on Latinos' share of *actual* voters exceeding the "threshold of exclusion" of 12.5% under a destaggered at-large system. (Tr. 2959:8–2960:10, 2978:9-15.) Any group's ability to meet such a threshold depends on its levels of cohesion and turnout. (Tr. 3116:21–3117:2.) Latinos account for 13.6% of the City's CVAP, barely more than the threshold of exclusion if they *all* show up to vote *and* all vote cohesively. But historical Latino cohesion and turnout are nowhere close to 100%. (Ex. 1652 at 21 [in no election are more than 9 percent of the voters Latino, and Latinos never comprise as much as 45 percent of the voters in any precinct in any election]; Ex. 1796, Tr. 3757:2-11 [falloff between Latino population and registered voting population is 60 percent]; see also, e.g., Ex. 278 [top three point estimates of Latino support in 2002 range from 58.6% to 82.6%]; Ex. 284 [top four point estimates of Latino support in 2008 range from 20.9% to 55.1%]; Ex. 287 [top four point estimates of Latino support in 2012 range from 50.2% to 92.7%].) Courts analyzing at-large alternatives presume minority turnout of 2/3. (E.g., *Euclid City Sch. Bd.*, 632 F.Supp.2d at 761–770.) Here, that same presumption would predict Latinos' share of actual voters to be 9%, well under the 12.5% exclusion threshold.

Section IV: "The CVRA Is Not Unconstitutional." (page 21, line 23 through page 25, line 3)

Plaintiffs defend the facial constitutionality of the CVRA. But the City has never argued that the CVRA is facially unconstitutional. Rather, the City has argued that it would be unconstitutional as applied on the facts of this case were the Court to impose a remedy (an order forcing the City to change its election system) because that remedy would be premised solely on race (an effort to increase Latino voting power) in the absence of any showing of a compelling interest that would justify it. The U.S. Constitution forbids the imposition of any predominantly race-based remedy unless that remedy is narrowly tailored to serve a compelling governmental interest. Courts have assumed without deciding that governments have a compelling interest in remedying vote dilution. Here, there is no evidence of vote dilution: districts would not enhance the voting strength of Latinos within any purportedly remedial district, and would submerge other Latinos—and other minorities—in overwhelmingly white districts. Similarly, no alternative at-large voting system would enhance Latino voting strength. The Constitution precludes imposing a race-conscious "remedy" that would overturn the City's choice of electoral system while curing no ills and creating new ones.

Objectionable portion of PSOD	Specific objections/responses
21:25-27	The *Sanchez* court did not hold that *Shaw* is inapplicable to CVRA cases. To the contrary, the court noted that "the *Shaw-Vera* line of cases reveals the potential for unconstitutional applications of the statute" (145 Cal.App.4th at 680)—specifically, in the case of "districting plans that use race as the predominant line-drawing factor." (*Id.* at 683.) The court in *Sanchez* rejected a *facial* challenge to the CVRA. It specifically left open the possibility of as-applied challenges, including those predicated on *Shaw* and related case law. (See *id.* at 665 ["The city may, however, use similar arguments to attempt to show as-applied invalidity later if liability is proven and a specific application or remedy is considered that warrants the attempt."]; see also *id.* at 690 [leaving for the trial court to determine whether "the particular remedy under contemplation by the court, if any, conform[s] to the Supreme Court's vote-dilution-remedy cases"].)
22:2-9	Plaintiffs are attacking a straw man. The City has never argued, as did the appellee in *Sanchez*, that the CVRA is facially unconstitutional, whether because it depends on racial classifications or otherwise. The City has instead argued that the statute would be unconstitutional *as applied* to the facts of this case if the Court were to find liability and impose a remedy notwithstanding the fact that plaintiffs have no remediable injury. The Court would be both ordering a change in election system in an ineffective effort to enhance Latino voting strength and endorsing the racial classification of voters—the drawing of a purportedly but not actually remedial district purely for purposes of maximizing the number of Latino voters within it—without advancing what courts have assumed to be a compelling justification for engaging in such classifications, the remediation of vote dilution pursuant to voting-rights statutes. As discussed above, plaintiffs have failed to demonstrate any vote dilution because they have not shown either any legally significant racially polarized voting or that the current at-large election system disadvantages Latino voter as compared to any alternative election system that could be used in Santa Monica. Moreover, districts would not enhance the voting strength of Latinos within the Pico district and would submerge other Latinos (and other minorities) in overwhelmingly white districts. The Constitution precludes imposing a race-conscious "remedy" that would overturn the City's choice of electoral system while curing no ills and creating new ones. Also, it is unclear why plaintiffs are citing the City's motion for summary judgment. To the extent that they are citing that motion, they should address not the City's recitation of background law, appearing on pages 10 through 13, but its argument that plaintiffs' theory of the case would result in an unconstitutional application of the CVRA, which appears on pages 13 through 19.
22:10–23:3	Plaintiffs focus on whether the configuration of districts is unconstitutionally "bizarre" under *Shaw*. But the holding in *Shaw* is not limited to "the expressive harm to voters conveyed by particular district lines." Such lines are just one means of signaling that a court has trafficked in racial classifications and thereby unconstitutionally wrought stigmatic harm.

	Here, it would not be the lines themselves, but the fact that the Court drew them at all. The only justification for compelling the City to change its electoral system is an ineffective effort to increase Latino voting strength, and the only reason for drawing the districts proposed by plaintiffs is to maximize the number of Latino voters in the purportedly remedial Pico district. But plaintiffs have failed to demonstrate any vote dilution because they have not shown either any legally significant racially polarized voting or that the current at-large election system disadvantages Latino voter as compared to any alternative election system that could be used in Santa Monica. And their proposed district could not actually be remedial, as its Latino voting population would be far too small for Latino voters to be able to elect candidates of their choice. Accordingly, the Court would have no business imposing any remedy at all, much less a district drawn with the intent of maximizing its Latino voting population. Further, as noted above, the *Sanchez* court did not reject the City of Modesto's constitutionality argument because of a distinction between improper district lines and improper adoption of districts, but instead because Modesto, which was pursuing a facial challenge to the CVRA, could not demonstrate that the statute is unconstitutional in every application.
23:5-17	Courts have long assumed, without deciding, that there is a compelling state interest in compliance with Section 2. The same should be true of the CVRA, at least to the extent that the scope of the CVRA is coextensive with that of Section 2. Of course, judicial action is not justified where it would not advance that compelling interest; here, no alternative electoral system would enhance the voting strength of Latino voters, and so there is no basis on which to compel the City to abandon an electoral system long favored by its voters. Also, plaintiffs' discussion of the rational basis test has no place in the Court's decision. Strict scrutiny applies because the Court would be imposing a remedy (both a forced change in election system to districts and a particular purportedly remedial district) solely for race-conscious reasons.
23:17-23	Plaintiffs here concede that the injury the CVRA was meant to remedy is vote dilution. It is curious, then, that plaintiffs in the same PSOD suggest that vote dilution is not even an element of the statute, and that in prior briefing plaintiffs insisted that racially polarized voting was itself somehow an injury (notwithstanding, among other things, the fact that a districted electoral system harnesses rather than cures such voting). The Court should clarify that vote dilution is indeed an element of the statute, with roots in both Section 14027 and the federal case law from which the CVRA borrows. Further, for reasons stated in response to, among other things, 21:10-22, which objections are incorporated by reference here, plaintiffs have not proved that the City's at-large electoral system has resulted in vote dilution, and the PSOD is inadequate insofar as it simply asserts that they have. No alternative electoral system—not districts and not some alternative at-large scheme—would enhance Latinos' voting strength.

23:25-26 & 24:4-19	Federal courts have assumed without deciding that race-conscious remedies are constitutional where all three *Gingles* preconditions are satisfied. *No* court has held that such remedies would be constitutional where a plaintiff could not satisfy the first *Gingles* precondition, as is the case here. Because plaintiffs cannot prove vote dilution, either in the manner called for by the federal courts (the possibility of a constitutionally permissible majority-minority district) or in any other way, satisfying the second and third *Gingles* preconditions alone would not be an adequate basis on which to conclude that a remedy is narrowly tailored to advance a compelling interest. (What is more, plaintiffs cannot satisfy those preconditions either.) Under plaintiffs' interpretation of the statute, which does not require a showing of vote dilution, even a trivially small but cohesive protected class could satisfy the second and third *Gingles* preconditions, and thus, according to plaintiffs' theory here, require a court to find liability and impose a remedy. But courts cannot have a compelling interest in imposing "remedies" that do not alleviate any harm, as would be the case with a voting group so small that no alternative electoral system could give it the ability to elect candidates of its choice.
24, fn. 13	Again, courts have assumed without deciding that compliance with the Voting Rights Act is a compelling state interest. Also, the pin cite for *Bethune-Hill* should be 801, not 802.
24:19–25:3	The CVRA would be unconstitutional as applied in these circumstances if it is interpreted to permit a finding of liability and the provision of a remedy. There is no reason to authorize courts to find liability and impose a remedy where no alternative electoral system could possibly enhance the relevant minority group's ability to elect a candidate of its choice. The cases interpreting Section 2, including *Bartlett v. Strickland*, hold that a Section 2 plaintiff must demonstrate that it is possible to draw a constitutionally permissible majority-minority district; where it is impossible to satisfy this objective and reasonable benchmark, there is no wrong, and there can be no remedy. It is at least possible that the CVRA liberalizes this requirement, and requires plaintiffs to satisfy some lesser benchmark, but it nevertheless cannot be interpreted to authorize a finding of liability and the provision of a remedy in a case like this one, where it is a demographic impossibility to craft an alternative electoral system that would enhance the relevant minority group's voting strength. Plaintiffs' contention that "if the CVRA generally satisfies strict scrutiny, it a fortiori satisfies strict scrutiny in application here" is ambiguous and a non sequitur. What plaintiffs mean by "generally" is unclear. If they mean that the statute would survive a facial challenge, as it did in *Sanchez*, then they have proven only that not every application of the CVRA is unconstitutional. That hardly forecloses the possibility that this particular application of the CVRA is unconstitutional. Finally, as addressed at length in the following objections, there is absolutely no evidence of intentional discrimination in this case.

Section V: "The Equal Protection Clause Of The California Constitution." (page 25, line 4 through page 26, line 23)

To prevail on their Equal Protection claim, plaintiffs must demonstrate that the City's at-large electoral system has caused a disparate impact that was intended by the relevant decisionmakers. In other words, constitutional vote-dilution claims are proven in the same way as any other Equal Protection claims—through evidence of disparate impact, causation, and discriminatory intent. Each is necessary but insufficient on its own.

Disparate impact in an Equal Protection analysis is proven with evidence that a protected class would have greater opportunity under some other method of election. Because the standard for proving vote dilution under Section 2 was intended to be more permissive than the constitutional standard, and because the CVRA is, in turn, at least possibly more permissive than Section 2, failure to prove vote dilution in support of a CVRA claim must, *a fortiori*, mean failure to prove disparate impact in support of a constitutional claim.

Whereas a statutory vote-dilution claim depends only on the *results* of an at-large system, a constitutional vote-dilution claim also requires proof that those results were *intended*. The Supreme Court has held that "'[d]iscriminatory purpose' . . . implies more than intent as volition or intent as awareness of consequences. It implies that the decisionmaker . . . selected or reaffirmed a particular course of action at least in part 'because of,' not merely 'in spite of,' its adverse effects upon an identifiable group." (*Personnel Adm'r of Mass. v. Feeney* (1979) 442 U.S. 256, 279.)

Objectionable portion of PSOD	Specific objections/responses
25:6-15	To the extent plaintiffs are arguing that an Equal Protection claim does not require proof of disparate impact or causation, and can instead be premised solely on discriminatory intent, they are simply wrong. Courts have repeatedly held that constitutional vote-dilution claims are proven in the same way as any other Equal Protection claims (e.g., *Rogers v. Lodge* (1982) 458 U.S. 613, 617; *Johnson v. DeSoto Cty. Bd. of Comm'rs* (11th Cir. 2000) 204 F.3d 1335, 1343–1346; *Cano*, 211 F.Supp.2d at 1245) and require evidence of disparate impact, causation, and discriminatory intent; each is necessary but insufficient alone.[5] (*Washington v.*

[5] The relevant California decisional law tracks federal law. (See *Jauregui*, 226 Cal.App.4th at 800 ["California decisions involving voting issues quite closely follow federal Fourteenth Amendment

	Davis (1976) 426 U.S. 229, 239 [disparate impact alone not enough]; *Personnel Adm'r v. Feeney* (1979) 442 U.S. at 273–274, 279 [intent must also be shown]; *Palmer v. Thompson* (1971) 403 U.S. 217, 224 [intent alone not enough]; *Cano*, 211 F.Supp.2d at 1248 [same]; *Johnson*, 204 F.3d at 1345–1346 [impact *and* intent not enough without proof of causation].) Plaintiffs argument that "modification of the original enactment" cannot "save a provision enacted with discriminatory intent" is also contrary to case law. *McCrory* explains that a subsequent enactment can "cure[] the harm" of past discrimination (*McCrory*, 831 F.3d at 240). And other cases have held that such enactments have succeeded in doing so. (See, e.g., *Johnson v. Governor of Fla.* (11th Cir. 2005) 405 F.3d 1214, 1223–1224 (en banc) [noting *Hunter* "left open" this question and rejecting challenge to Florida statute first enacted in 1868 and reenacted, with no apparent racial bias, in 1968]; *Hayden v. Paterson* (2d Cir. 2010) 594 F.3d 150, 163–169 [doing the same with respect to a similar New York statute that had been reenacted without invidious intent]; see also *Veasey v. Abbott* (5th Cir. 2016) 830 F.3d 216, 232 (en banc) ["the most relevant 'historical' evidence is relatively recent history, not long-past history"].)

Section VI: "Defendant's At-Large Election System Violates The Equal Protection Clause Of The California Constitution." (page 26, line 24 through page 32, line 17)

Plaintiffs' intentional discrimination claim largely imploded at trial. It became clear during Dr. Kousser's cross-examination, and was then crystalized during Dr. Lichtman's direct examination, that Santa Monica adopted and maintained its current at-large electoral system in order to *benefit* minorities and *enhance* their voting strength—which helps explain why the City's most prominent minority leaders have consistently supported the at-large method.

Santa Monica adopted the at-large election system in 1914 to replace the district-based system that had been in place since 1906. Plaintiffs have not contended that this initial adoption of the at-large system resulted in or was the result of any discrimination. Between 1914 and 1946, the City was run by three commissioners elected at-large to designated posts—the Commissioner of Finance, the Commissioner of Public Works, and the Commissioner of Public Safety. Designated posts are recognized as a classic mechanism for perpetrating invidious discrimination, since they permit voters to cast only

analysis."]; *Hull v. Cason* (1981) 114 Cal.App.3d 344, 372–374 ["[t]he equal protection standards of the Fourteenth Amendment, and of the state's Constitution, are substantially the same"]; *Sanchez v. State* (2009) 179 Cal.App.4th 467, 487 [citing federal law for elements of Equal Protection claim]; *Kim v. Workers' Comp. Appeals Bd.* (1999) 73 Cal.App.4th 1357, 1361 [same].)

one vote for a single position, effectively preventing minorities from concentrating their votes and electing candidates of choice.

By 1945, Santa Monica's voters understood the limitations of a commission form of government. As a result, they overwhelmingly approved the election of a Board of Freeholders—made up of 15 members of the community, tasked with proposing comprehensive reforms to Santa Monica's system of government. There was no evidence that any of the Freeholders harbored any racial animus. On the contrary, at least one Freeholder was a member of the NAACP and the local Interracial Progress Committee.

The Freeholders diligently studied various forms of government. They ultimately proposed a new City Charter that abandoned designated posts and included, among other things, a seven-member City Council elected at large—essentially the same method of election in place today.

The new Charter would immediately and significantly increase minority voting strength by expanding the number of seats from three to seven. Voters could also cast up to three or four votes in each Council election—with no prohibition on "single-shot" or "bullet" voting, thus allowing minorities to concentrate their votes on a single candidate (or multiple candidates of choice). The new Charter also did not include a majority vote requirement, which would have impeded the election of a minority candidate of choice through a splintering of votes for other candidates. Also included in the new Charter was a prohibition against racial discrimination for City employees, punishable by fines and/or imprisonment. The pro-minority aspects of the new Charter were widely understood. The local newspaper even published an article titled, "New Charter Aids Racial Minorities," which highlighted, among other features, the provision that outlawed discrimination in public employment, and that "the opportunity for representation in the minority groups has been increased two and a half times over the present charter by expansion of the City Council from three to seven members." (Ex. 1816 at 477.)

Following the Freeholders' proposal of the new Charter, they conducted significant outreach in the community, holding a series of meetings (including with members of the NAACP and the League of Women Voters), and making copies of the proposed Charter available throughout the City so that residents could review it.

There was considerable debate about the pros and cons of the new Charter. On one side, an "Anti-Charter Committee" published a series of ads that advocated for maintaining the status quo—that is, three commissioners elected at-large to designated posts—arguing that "[o]ur present government can't be too bad!" The Anti-Charter Committee remained mostly anonymous, referred to simply as "business men" in the local press (none was a member of the NAACP or Interracial Progress Committee), although it was widely suspected that the opposition was being mounted by incumbent City officials and "others riding on the local gravy train." (Ex. 1816 at 499.) The anti-Charter ads included anti-Communist rhetoric, concerns about the potential costs of a new government, and complaints about the council-manager system, which the ads referred to as a "dictatorship."

Significantly, none of the public arguments against the new Charter suggested that district-based elections would have been preferable for minorities. And there is no dispute that a district system would have been highly detrimental to minorities in 1946, which is why no minorities publicly advocated for such a system in 1946.

On the other side of the debate, prominent minority leaders (among many others) urged citizens to vote "yes" on the new Charter and the at-large elections of a seven-member council. Vocal supporters of the Charter included Reverend W.P. Carter—Santa Monica's former head of the NAACP and a member of the Interracial Progress Committee, who started the Calvary Baptist Church and was "probably the most influential [African American] in the city, maintaining strong leadership through the 1960s civil rights movement." (Ex. 1816 at 498.) Other minorities advocating in favor of the new Charter included Reverend Carter's wife, Blanche Carter (who later became the first African-American on the Santa Monica school board), Mrs. Marcus Tucker (whose son, Marcus Jr., would later become Santa Monica's first African-American City Attorney, and then a Superior Court Judge), Mrs. Marion Barnes (whose husband, Frank, was a former NAACP leader), Ysidro Reyes, Reverend Alfonso Sanchez, and Rabbi Maurice Kleinberg. There is no evidence that *any* racial or ethnic minorities opposed the new Charter.

In 1946, Santa Monica voted in favor of the Charter, and it held its first election under the new system in 1947.[6]

In 1975, Santa Monica's voters overwhelmingly rejected a ballot proposition that would have resulted in a return to district-based elections and made a host of other changes. At the time, the City's two sitting African-American councilmembers urged a "no" vote on district elections, as did a Latino candidate for the Council, Carmen Casillas (a member of LULAC), who explained that he believed "in the right to vote for all seven council seats." Plaintiffs do not argue that the rejection of districts in 1975 was racially discriminatory; in fact, it decidedly was not.

In 1984, the City began holding "on-cycle" elections at the same time as gubernatorial and presidential elections. This helped minorities, since "off-cycle" elections in odd years depress turnout.

In 1988, Santa Monica voters overwhelmingly rejected a proposition that would have reintroduced designated posts, which are far less favorable to minorities than open seats.

Shortly before 1992, the City enacted measures that were beneficial to minorities, including prohibiting discrimination in private clubs and requiring 30% of new construction to be set aside for affordable housing. In 1990, voters elected Tony Vazquez to the City Council.

In 1992, the City Council formed a Charter Review Commission to evaluate the merits of adopting a new method of election—somewhat similar to what the Board of Freeholders were tasked with doing in 1945. The Commission engaged experts, held public meetings, and delivered a report to the City Council. Fourteen of the fifteen Commissioners favored switching to a new method of election, but they could not agree on what that new method should be (eight favored a ranked-choice scheme, and only five preferred reverting back to districts). The Commissioners noted that they had drafted their report with limited information and time, and that further investigation was necessary before any conclusions could be drawn about the probable success rates of minority candidates under any of the competing systems.

[6] Reverend Carter ran for City Council in 1947 and came in 9th of 49 candidates—demonstrating that he received a significant amount of crossover support from whites, given the small population of African Americans in Santa Monica at that time.

With respect to districts, the Commission observed in its report that "voting Latinos in [a] district might be too few to prevail, and Latinos outside the district would have less influence on the outcome than they do now," minorities would lose influence over six of the seven councilmembers, voters would vote every four years instead of every two, and councilmembers may tend to focus only on their own districts rather than the good of the whole City. In addition, district boundaries would require revision every ten years, and the reapportionment process generates friction and is subject to abuse through gerrymandering.

The City Council held a lengthy public hearing on the Commission's report, including a policy-based discussion of the pros and cons of the various election systems identified in the report. The Councilmembers consistently expressed a desire to expand minority representation in Santa Monica. Ultimately, after the Council debated the relative merits of the various alternatives, they voted not to put either ranked-choice voting or districts on the ballot, but resolved to collect further information on alternative election systems. Contrary to plaintiffs' claims, no Councilmember made any comments that can reasonably be interpreted as indicating any discriminatory intent.

In any event, the topic of districted elections was again put to the voters ten years later. In 2002, Santa Monica again rejected a ballot proposition that would have reverted back to districted elections. Plaintiffs do not claim that this rejection was intentionally discriminatory; it was not.

Simply put, it would be reversible error for this Court to find an Equal Protection violation on this record.

Objectionable portion of PSOD	Specific objections/responses
26:26–27:5	To prevail on their Equal Protection claim, plaintiffs must demonstrate that the City's at-large electoral system has caused a disparate impact that was intended by the relevant decisionmakers. (*Rogers v. Lodge* (1982) 458 U.S. 613, 617; *Johnson v. DeSoto Cty. Bd. of Comm'rs* (11th Cir. 2000) 204 F.3d 1335, 1343–1346; *Cano*, 211 F.Supp.2d at 1245.) The evidence does not show that the City's electoral system was ever—in 1946, 1992, or at any other time—adopted or maintained for the purpose of discriminating against minority voters. See also discussion under 25:6-15 above.
27:5-7	This is a misleading excerpt from the Charter Review Commission report. Although the Commissioners favored switching to a new method of election, they could not agree on a substitute system. (Ex. 127 at 23–24.) Eight Commissioners favored a ranked-choice-voting scheme; only five

	preferred districts. (127 at 24; Tr. 1689:12-17, 1691:20-25, 3802:11-20.) The Commissioners noted that they had drafted the report with limited information and time, and that further investigation was necessary before any conclusions could be drawn about the "probable success rates" of minority-preferred candidates under the competing systems. (Ex. 127 at 27–28, 64.) After a public hearing, the Council voted not to put either ranked-choice voting or districts on the ballot, but resolved to collect further information on alternative election schemes. (Tr. 3257:16-24.) In any event, the quotation cannot, as a matter of law, support a finding of purposeful discrimination. "'Discriminatory purpose' . . . implies more than intent as volition or intent as awareness of consequences. It implies that the decisionmaker . . . selected or reaffirmed a particular course of action at least in part 'because of,' not merely 'in spite of,' its adverse effects upon an identifiable group." (*Feeney*, 442 U.S. at 279.)
27:7-11	The problems with this argument are legion. Plaintiffs are referring to an advertisement run by the Anti-Charter Committee, and are taking it out of context in any event. As an initial matter, and as noted in response to 27:5-7, mere awareness of discriminatory consequences is never enough to support a claim of intentional discrimination. Further, the City proved at trial that this and other Anti-Charter Committee ads were nothing more than a smokescreen intended to preserve the current at-large system, *not* a call to switch to districted elections, as plaintiffs have suggested. The ads make clear that Committee favored the status quo: a three-commissioner, designated-post system, which was far less favorable to minorities than the new system. (Ex. 1816 at 454 ["Our present government can't be too bad!"]; *id.* at 479 [arguing that "Santa Monica has one of the most economical governments in the country. Why change to the unknown?"]; *id.* at 459 [likening Charter supporters to communists]; Tr. 3635:2-16 [Anti-Charter Committee ad does not refer to or advocate for districts]; Tr. 3643:16-26, 3647:27–3650:23 [had Anti-Charter Committee succeeded, City would have maintained status quo, not switched to districts].) The Committee was not a group of progressives; for instance, it defended the commission form of government by lauding the example of Topeka, Kansas—whose Board of Education would, a few years later, be the defendant in *Brown v. Board*. (Ex. 1816 at 470; Tr. 3652:16–3653:23.) Although supporters of the Charter, many of them minorities, publicly declared their support, Anti-Charter Committee members mostly identified themselves only as "business men and other private citizens"; and the few who did reveal their names were not members of the Interracial Progress Committee. (Tr. 1539:6-13 [Charter proponents affixed their names to ads]; Ex. 1816 at 454, 459, 479, 480, Tr. 3654:22–3655:22 [Charter opponents did not affix their names to ads, and the few who identified themselves otherwise were not members of the Interracial Progress Committee].) Plaintiffs did not identify even a single member of any minority group who advocated for districts in 1946. (Tr. 3269:10-17, 3276:26-28.)

27:14-17	As noted immediately above, in response to 27:7-11, it is not only legally irrelevant but also false that "proponents and opponents of the at-large system . . . recognized that the at-large system would impair minority representation." Any such finding would be legally irrelevant because mere awareness of the possibility of a disparate impact cannot support a finding of intentional discrimination. It would also be false. The only document in evidence identified by plaintiffs as supporting that assertion is the Anti-Charter Committee advertisement discussed above, which should be disregarded as misleading—its authors wanted to maintain the electoral scheme that had been adopted in 1914; they did *not* favor districted elections. Nor, for that matter, is there any record evidence showing that *any* members of *any* minority group advocated for districts or opposed the charter. (Tr. 3269:10-17, 3276:26-28, 3362:7-24.) The absence of such evidence is unsurprising because the minority population in 1946 was too small for districts to have given any minority group the ability to elect candidates of its choice. (Tr. 3269:18–3276:28.) In fact, notable minority leaders in Santa Monica openly endorsed the Charter, including the City's most prominent African-American leader (Reverend W.P. Carter) and other members of Santa Monica's Interracial Progress Committee. (Ex. 1816 at 499, 524 [pro-Charter ads supported by, among others, Rev. Welford Carter, Mrs. Welford Carter, Rev. Alfonso Sanchez, Sr., Mrs. Marcus Tucker, Rabbi Maurice Kleinberg, Ysidro Reyes, Martin Barnes, and Vivian Wilken]; Ex. 1206 at 193 [listing members of Interracial Progress Committee who lent their names to pro-Charter ad]; Ex. 1206 at 193, 259 [Rev. Welford Carter, pastor of Calvary Baptist Church, member of the Committee for Interracial Progress, and the most influential African-American leader in the City through the Civil Rights movement]; Ex. 1816 at 498, Tr. 3365:18-25 [Mrs. Carter was "an activist in Santa Monica in her own right," and "in 1971 she became the first African-American to serve on the School Board in Santa Monica"]; Ex. 1206 at 195, 242 [Vivian L. Wilken, founding member of the Santa Monica branch of the County Supervisors Interracial Progress Committee, and a member of the NAACP]; Ex. 1816 at 513 [Frank Barnes was "a fearless civil rights advocate for over 60 years, serving as President of the Southern Area Conference of the NAACP for 10 years" and "co-founded the Fair Housing Council of California")] Ex. 1206 at 241, Tr. 1443:18–1445:6, 1445:14-18 [Martin Goodfriend, founder and president of the Jewish Community Center, President and founder of the Jewish Community Council, and President of the B'Nai B'rith Lodge]; Ex. 1816 at 15, Tr. 1447:12-26 [Leo B. Marx, former President and board member of Beth Shalom Temple and President of the Jewish Family Service]; Ex. 1817 at 1867, 2085 [Marcus Tucker was first African-American physician to live and work in Santa Monica, and Marcus Tucker, Jr., became a Los Angeles Superior Court judge]; Ex. 1817 at 2087 [citing Ysidro Reyes's many "civic, professional, fraternal, religious, and political memberships"]; Ex. 1206 at 193 [listing members of Interracial Progress Committee]; Tr. 3372:25–3373:19 ["It is inconceivable these members of the Interracial Progress Committee, including the preeminent African-American civil rights leader, including a number of other African Americans and Latinos, would put their name on an ad supporting a charter that allegedly had the effect and intent of discriminating against minorities."]; Tr. 3373:20–3374:2 [no evidence Committee members were hostile to the Charter].)

	The notion that the Charter was known to be a threat to minority representation is also demonstrably false because the changes it effected could only have had a positive impact on minorities. Three commissioners became seven councilmembers, making it easier for a cohesive minority group to elect candidates of its choice. (Tr. 3260:4–3265:2.) Voters who previously had at most two votes to cast (in separate races) could now cast three or four votes for candidates in the same election. (Tr. 3253:20-23, 3260:4–3265:2, 3266:6-25.) Designated posts, recognized as a classic mechanism for perpetrating invidious discrimination, were abandoned. (Tr. 3261:9–3262:27, 3012:20-28.) The new system did not impose a majority-vote requirement or prohibit bullet voting, allowing minorities to maximize their voting strength. (Tr. 3333:14–3334:4, 3015:1–3017:11.) And any districted system "would have been highly detrimental to minorities," as it would have packed some of them into a district where they would not have the ability to elect candidates of their choice and submerged the rest in overwhelmingly white districts. (Tr. 3276:6-28.) Also, the 1946 Charter prohibited discrimination against City employees on the basis of race, punishing violations with a fine and/or imprisonment. (Ex. 1512 at 15 [§ 1101], 25 [§ 1701]; Tr. 3322:16–3330:8; see also Tr. 3330:9–3331:17 [collective-bargaining provision in Charter also favorable to minorities].) Proponents of the Charter specifically noted that it would benefit minority voters. (Ex. 1816 at 443–444, 477; Ex. 1323 ["Barnard told the voters that every authority on City government consulted by the Freeholders had urged the Charter framers not to handicap the council manager form of government by giving Santa Monica seven little ward mayors, each competing against the other."]; see also Tr. 3342:2-4 [Cornett later "denounced the move to districts and said it is a move to disenfranchise the elector by limiting his vote to one council member"].)
27, fn. 15	The reference to the School Board here is irrelevant. Plaintiffs have raised neither a CVRA nor Equal Protection challenge to the at-large method of elections as it applies to the school board.
27:17-21	Dr. Kousser's sole source on interpreting propositions, Prof. HoSang's book, notes that Prop. 11 was not, as Dr. Kousser contended and plaintiffs somehow still insist, a "pure measure of attitude on racial discrimination," because *both sides* appealed to racial tolerance and charged the other with racial intolerance. (Ex. 1781 at 61 ["few Californians seemed willing to openly reject the principles of nondiscrimination, equal opportunity, and tolerance. . . . The campaign against Proposition 11 was not premised on a rejection of tolerance per se but on a proposition about what types of authority within a society that had committed itself to tolerance."]; Tr. 3294:27–3297:8 ["both sides had used language and appeal and persuasiveness of racial tolerance and racial progress, and each charged the other with racial intolerance"].) Prop. 11 was also associated with communism. (Ex. 1781 at 61; Tr. 3297:9-28.) And Prof. HoSang explains that it is unreasonable to conclude that opposition to Prop. 11 was racially driven because many people who voted against Prop. 11 also voted against a straightforwardly racist measure, Prop. 15, which would have barred aliens from holding land. (Ex. 1781 at 59 ["the outcome of another proposition on the same ballot demon-

	strates the challenge of making clear pronouncements about the electorate's judgments about race and racism based on Proposition 11 alone"]; *id.* at 61 ["Many factors shaped this particular historical outcome: the exigencies of war and peace, the rising tide of anti-Communism and Cold War politics, the decline of left-oriented unionism, and the actions of a diverse set of political forces"].) Tellingly, Dr. Kousser omitted Prop. 15 from his declaration, even though he had remarked on it in his notes. (Tr. 3298:16–3299:14; Ex. 1300 [Prop. 15 does not appear in Dr. Kousser's declaration].) This is one of many instances of inconsistency and bias in Dr. Kousser's testimony that demonstrates its lack of credibility and reliability. Also omitted from Dr. Kousser's declaration, though again present in his personal notes, is the fact that the 1946 Charter included a Fair Employment Clause. (See Tr. 3322:16-3324:5.) The clause explicitly bars discrimination "because of race, religion, color, national origin, or ancestry" in employment for both applicants and people already holding jobs. (Tr. 3322:24-3323:17.) Including this ordinance in the charter not only reinforced constitutional guarantees, but also made discrimination in employment *a crime subject to imprisonment* in the City of Santa Monica, an unprecedented action for cities at the time. (See Tr. 3327:19-3329:27.) Proposition 11 was also controversial insofar as it would also have created a Fair Employment Practices Commission to police unlawful practices. (See Tr. 1406:15-22.)
27:22-23	Every *Arlington Heights* factor weighs *against* a finding of discriminatory intent in this case for the reasons outlined in the following objections.
28:1-6	There is no record evidence concerning elections held in the 1940s, 1950s, or 1960s, nor any record evidence concerning the race or ethnicity of the candidates running in those elections, or the preferences of minority voters in those elections. Further, unrebutted record evidence shows that minority population in 1946 was too small for districts to have given any minority group the ability to elect candidates of its choice. (Tr. 3269:18–3276:28.) So whether minorities did or did not vote cohesively in these decades—and there is no evidence either way in the record—they could not have elected candidates of their choice under *any* electoral system, including a districted one.
28:6-9	The purported "impact on the minority-concentrated Pico Neighborhood" was addressed at length above in response to 20:17–21:6. That series of objections, incorporated by reference here, also explains why it is unreasonable to conclude that the City has "ignore[d] [minority] interests"; to the contrary, the City has invested a great deal of money and effort into the Pico Neighborhood and established a wide array of programs that directly benefit minority residents. Further, candidates in Santa Monica cannot afford to ignore the Latino vote. The electorate is often considerably fragmented, and Latino votes may account for the difference between winning and losing. Indeed, Latino-preferred candidates are elected more often than not, even according

	to plaintiffs' own election analyses. (See Cl. Br. at 6–9; Exs. 272, 275, 278, 281, 284, 287, 290 [Council elections]; Ex. 1652 at 72, Tr. 2315:3–2316:28 [exogenous local elections, ER]; Ex. 1652A at 2, Tr. 2320:7–2321:10 [exogenous local elections, EI].)
28:10-11	The historical background of the adoption of the Charter in 1946 does not support a finding of discriminatory intent, for the reasons outlined below.
28:11-12	As was addressed at length above in response to 27:5-7, 27:7-11, and 27:14-17—which objections are here incorporated by reference—it is not true that at-large elections were "well understood" in 1946 to disadvantage minorities. It is also legally irrelevant, because mere awareness of a potential disparate impact cannot support a finding of intentional discrimination. Additionally, at-large elections are not per se disadvantageous to minority voters. They can be imposed or applied in such a way that they are disadvantageous, but the very purpose of the CVRA is to distinguish problematic at-large systems from unproblematic ones. If at-large systems were per se disadvantageous to minority voters, the statute would presumably be written as a simple prohibition of at-large voting schemes rather than a multi-part and complex statute expressed in over 1,000 words.
28:12-14	This statement misrepresents the record in two respects. First, the evidence to which plaintiffs refer, Exhibit 1816, shows that the non-white population was not growing a great deal. It grew substantially only in percentage, not absolute, terms; the City's population remained overwhelmingly white. (Ex. 1300 at 59 [Dr. Kousser's presentation of population trends]; Ex. 1816 at 460; Ex. 1801, Ex. 1802, Tr. 3284:16–3289:21 [non-white share of population increased 1.1 percentage points, from 3.4% to 4.5%, from 1940 to 1946].) Second, the article in question does not sound a note of "alarm." To the contrary, it is a short, neutrally worded piece concerning Census data, and plaintiffs' contrary interpretation is unreasonable and tendentious. In full, the article reads: *White Population Total Here 64,415* *Government Releases Census Breakdown* The white population of Santa Monica increased 24.6 percent between April 1, 1940 and July 1, 1946, and the nonwhite population increased 59 percent, the United States Bureau of Census reported today. A breakdown of figures compiled in the special census of last July showed a total population in Santa Monica of 67,743, an increase of 26.1 percent over the 53,500 reported in 1940. In 1946 there are 64,415 white residents, and 3058 comprising the total of other races. The number of occupied dwelling units in Santa Monica was 18,025 on April 1, 1940, and on July 1 of this year census tabulators reported the figure had increased to 22,740 occupied units. This is an increase of 26 percent. The population per dwelling unit remained the same at an average of 3.97

	The figures were released by J.C. Capt, director of the Census Bureau, Washington, D.C.
28:14-16	The fact that someone was white, wealthy, or lived in a certain place does not mean that that person was racist and intended to discriminate against minority voters. Tellingly, plaintiffs' expert, Dr. Kousser, identified not a scrap of evidence that any Freeholders harbored any racial animus. (Tr. 3284:6-14.)
28:16-18	Plaintiffs assert, without explanation, that at-large elections were in the "self-interest" of the Freeholders. It is far from clear, as a logical or historical matter, why each of the 15 Freeholders would have favored at-large elections, or how at-large elections would have helped them. To the extent that plaintiffs' argument depends on race or ethnicity, it is illogical. As shown by the newspaper article to which plaintiffs refer earlier in the same paragraph, the City remained over 95 percent white in 1946. *No* electoral system, districted or otherwise, would have given any cohesive minority group the ability to elect candidates of its choice. Also, there is no record evidence showing that at least three Freeholders ran for Council seats, nor would such evidence prove anything in any event. Perhaps those same candidates would also have won election under a districted system.
28:18-21	Plaintiffs' facts are either false or do not support their theory. Plaintiffs' only evidence concerning the Zoot Suit Riots specifically *exonerates* Santa Monica. (Tr. 3281:11–3283:6.) There is no record evidence supporting plaintiffs' view that the Committee on Interracial Progress was an outgrowth of unusual racial strife in Santa Monica. The Court should draw the opposite conclusion—that Santa Monica was unusually progressive with respect to race relations. Further, it is notable that members of the Interracial Progress Committee *supported the Charter*. (E.g., Ex. 1206 at 193, 259; Tr. 3372:25–3374:2.) No members of the Committee, by contrast, signed on to the Anti-Charter Committee advertisements that plaintiffs misread as support for districts. (Ex. 1816 at 454, 459, 479, 480, Tr. 3654:22–3655:22.) And anti-Japanese sentiments were the isolated and temporary product of wartime fervor, and they had nothing to do with elections. (Tr. 3279:16–3280:14.)
28:21-25	Objections to this line of argument were registered above in response to 27:17-21. Those objections are incorporated by reference here. In addition, Dr. Kousser's EI analysis purporting to show a strong correlation is flawed for several reasons.
28:26–29:2	This supposed "waffl[ing]" is not evidence that the Freeholders were aware that districted elections would be better for minority residents or that they wished to discriminate against those residents.

	To the contrary, there were sound, non-discriminatory reasons not to put the voters to a choice between competing electoral systems. No one, particularly minorities or those opposed to the Charter, was clamoring for districts; the ballot was already long and complicated, so there was real risk of confusion if voters had to choose among competing systems; and a hybrid system would have been "the worst of all worlds for minorities," who were too few in number to control a district and who would have been able to vote for only four councilmembers (three at-large and one in a district) instead of seven. (Tr. 3319:7–3320:6.) The high degree of transparency was also inconsistent with an intent to conceal racial discrimination. (Tr. 3312:19–3316:25.) The Freeholders and local civic organizations organized meetings to discuss the Charter, including with members of the NAACP. (E.g., Ex. 1816 at 442, 447, 477; Tr. 3316:27–3318:17.) In sum, it is illogical and counterfactual to conclude that the decision to present a new at-large system, which eliminated the arguably discriminatory features of the old electoral system, was motivated by discrimination.
29:3-7	Plaintiffs have so little to say to support their unfounded claim of discriminatory purpose that they resort to recycling allegations to fit more than one *Arlington Heights* factor. For the reasons explained immediately above, in response to 28:26–29:2, and incorporated by reference here, there was nothing suspicious about the Freeholders' decision to place only what would become the 1946 Charter on the ballot. Further, there is no record evidence that they did so "in the wake of discussion of minority representation." It is unclear what plaintiffs mean by such "discussion." If they mean the advertisement of the Anti-Charter Committee addressed above, in response to 27:7-11 and 27:14-17—which objections are incorporated by referenced here—then that was no "discussion" at all. It was a ploy, an exercise in misdirection by a small group of people who were not intent on districts or a different at-large system and wished to preserve the status quo. In fact, as noted above, in response to 27:14-17—and which objections are incorporated here by reference—the relevant "discussion" about the effect of the Charter on minority voting strength was uniformly positive, with prominent persons of color backing the Charter and Freeholders publicly touting the greater representation it would bring minority voters. As for the article noting that the Freeholders' course of action was "unexpected," it was never admitted into evidence and should not be cited in the Court's Statement of Decision. Even if it were, the article itself explains the non-discriminatory reasons why the Board acted as it did: (1) "it would not be desirable to confuse the issues by placing both [options] on the ballot"; (2) "election at large is the best method"; (3) at-large elections were "calculated to eliminate 'log rolling' tactics." (Ex. 24 [not admitted].)
29:8-11	Plaintiffs cite no legislative or administrative history. They still insist, without evidence, that "proponents and opponents" of the Charter alike "understood that at-large elections would diminish minorities' influence on elections." As noted several times above, including in response to 27:7-11 and 27:14-17—and which objections are incorporated by reference here—it was *not* widely understood that the City's current at-large

	system would diminish minority voting strength. To the contrary, contemporaneous statements demonstrate that Freeholders and minorities alike knew that the Charter would *enhance* minority voting power, and that they did not favor districts as an alternative. There is no evidence that *any* racial or ethnic minorities opposed the Charter. To the contrary, notable minority leaders in Santa Monica openly *endorsed* the Charter, including the City's most prominent African-American leader (Reverend W.P. Carter) and other members of Santa Monica's Interracial Progress Committee. As for districts, by contrast, little of the substantial public debate over the Charter concerned districts. (E.g., Ex. 1816 at 492 [City worker protections]; Ex. 1816 at 486 [tax rate under council-manager form of government lower]; Tr. 1528:14-18 [Kousser admitting that a "reduction in taxes can be a significant motivation" in voting decisions]; Ex. 1816 at 456 [City Attorney]; Ex. 1816 at 491 [City Manager]; see also Tr. 1557:27-28 [plaintiffs' counsel arguing that the Charter was "multiple, multiple pages of many things. It is not just at-large versus district voting"].) Further, there is *no* record evidence showing that *any* members of *any* minority group advocated for districts (Tr. 3269:10-17, 3276:26-28), which is unsurprising because the minority population in 1946 was too small for districts to have given any minority group the ability to elect candidates of its choice. (Tr. 3269:18–3276:28.)
29:16-18	Santa Monica voters have twice considered the question whether they would prefer districted elections over the current at-large system. They overwhelmingly rejected the idea both times. (Ex. 1653A at 26, Tr. 2304:23–2306:17 [ER estimates of Measure HH in 2002]; see also Ex. 1652A at 2, Tr. 2321:1-10 [EI estimates of Measure HH in 2002]; Ex. 1368 at 9 [election results on Prop. 3 in 1975].) In 2002, opposition to Measure HH was overwhelming among both Latino and white voters. (Tr. 2303:21–2307:12; Ex. 1653A at 43.)
29:18-21	This is not an accurate characterization of why the Commission was appointed. The Charter Review Commission's report states simply that the Commission "was appointed by the City Council to review several specific issues relating to the City Charter." (Ex. 127-1) The majority of these issues did not relate to the method of selection of the City Council. (Ex. 127-15 to -19). The Commission's report also reveals that it had a large number of objectives, only one of which was "to ensure that governing bodies reflect the ethnic diversity of Santa Monica." (Ex. 127 at 29.) Other objectives included: "to guarantee accountability, so that over the long term Council members faithfully reflect popular preferences in their policy-making"; "to preserve accessibility, so that over the short run Council members are responsive to day-to-day needs of their constituents"; "to facilitate the representation of the diverse currents of opinion in Santa Monica, and assure a place on the public agenda for the varied priorities of many organizations and all neighborhoods"; and "to maintain, while broadening the issue agenda to an array of individual and group concerns, the centrality of common concerns, and assure that Council members approach problems with the interest of the whole City foremost in their minds." (*Id.* at 9–10.)
29:23-25	Dr. Kousser concluded in his 1992 report only that "if someone brought a case, the city would have to defend itself." (Ex. 1315 at 1.) Dr. Kousser

	also emphasized that "the time for my investigation was very short, my research has not been exhaustive by any means, and my conclusions should be regarded as quite tentative." (*Id.* at 2.) His reasons for his tentative conclusion were not identical to those supplied by plaintiffs in the PSOD. (See Ex. 1315.)
29:26-27	The "study and investigations" of the Commission not completed. The Commissioners themselves noted that they had drafted the report with limited information and time, and that further investigation was necessary before any conclusions could be drawn about the "probable success rates" of minority-preferred candidates under the competing systems. (Ex. 127 at 27–28, 64.) Although 14 of the 15 Commissioners favored switching to a new method of election, they could not agree on a substitute system. (Ex. 127 at 23–24.) Eight Commissioners favored a ranked-choice-voting scheme; only five preferred districts. (Ex. 127 at 24; Tr. 1689:12-17, 1691:20-25, 3802:11-20.)
29:27–30:2	The Commissioners focused not exclusively on racial and ethnic minorities, but also on "neighborhoods and issue groups." (Ex. 127 at 24.) Their report scarcely mentions the Pico Neighborhood. And although the Commissioners generally agreed that the City should adopt a new electoral system, they could not agree on the best alternative, in large part because each of them, including districts, had major drawbacks (e.g., districting would have a "disempowering" effect, because "every voter would lose much influence over six of seven council members," which the "majority of the Commission believed . . . was an unacceptable tradeoff." (*Id.* at 5.)
30:4-5	Nothing in the video even remotely demonstrates that any councilmember chose not to put districts to a vote of the electorate for a racially discriminatory reason, as plaintiffs were obligated to prove. To the contrary, plaintiffs have admitted that there is no evidence of racial animus on the part of the Council in 1992; in fact, the councilmembers consistently expressed a desire to *expand* minority representation. (Tr. 968:2-4 [Councilmember Abdo: "I am a strong proponent for finding ways to increase minority representation on the council"]; Tr. 986:2-12 [Dr. Kousser noting that councilmembers stated that "they wanted more minorities on the council"]; Tr. 1623:5–1625:18 [Dr. Kousser agreeing that councilmembers did not make any explicitly discriminatory statements]; see also Tr. 3394:21-25 [plaintiffs' counsel arguing that "We have never said that this is anything about racism. We're talking – in fact, we've said the opposite, with the analogy to the Edelman situation in Gloria Molina. We've said the opposite."].)
30:5-13	Irrelevant. Mere awareness of the possible disparate impact of a challenged enactment cannot support a finding that the enactment was motivated by a discriminatory purpose. (See, e.g., responses to 27:5-7 and 27:7-11, which are incorporated by reference in relevant part here.) The statements made during the Council meeting (a video recording of which, in its totality, is in evidence as Ex. 267) demonstrate that the intent

	of the Councilmembers was benign, not discriminatory. In fact, the councilmembers consistently expressed a desire to expand minority representation. (Tr. 968:2-4 [Councilmember Abdo: "I am a strong proponent for finding ways to increase minority representation on the council"]; Tr. 986:2-12 [Dr. Kousser noting that councilmembers stated that "they wanted more minorities on the council"]; Tr. 1623:5–1625:18 [Dr. Kousser agreeing that councilmembers did not make any explicitly discriminatory statements]; see also Tr. 3394:21-25[(plaintiffs' counsel arguing that "We have never said that this is anything about racism. We're talking – in fact, we've said the opposite, with the analogy to the Edelman situation in Gloria Molina. We've said the opposite."].) No speaker had any evidence that the City's electoral system discriminated against Latino voters. At least one pointed to Dr. Kousser's 1992 report, but not only was that report riddled with inconsistencies and errors, but Dr. Kousser did not conclude that the City had discriminated against minorities in adopting its current electoral system. He concluded only that the City would need to defend itself against a claim to that effect. (Ex. 1315 at 1.) And some speakers expressly disavowed the idea that the City's electoral system was the product of intentional discrimination. (See, e.g., Tr. 1127:28–1128:12 [De Santis stating, "I don't think that any of the members of this council have discriminatory intent!"]; Tr. 1627:22–1628:19 [Fajardo noting he had no opinion on whether the electoral system was the product of discriminatory intent].) The Council could not have "understood well that the at-large system prevented racial minorities from achieving representation," because no record evidence shows that districted elections would have allowed Latinos to elect candidates of their choice in 1992; in fact, the only record evidence is to the contrary. (Tr. 1681:12-20 [Dr. Kousser did no analysis to show that districts would have increased Latino voting strength in 1992]; Tr. 3752:4-11 [Dr. Lichtman stating that no district could have done so].) In fact, any districted system would have had an adverse effect on minority groups, which would have been too small to elect candidates of choice in any district but whose influence would have been diluted across seven districts. (Tr. 3752:12-19, 3794:23–3795:8, 3796:20–3797:15, 3801:2-25 [districts would have had adverse effect on African-Americans and Asians]; Tr. 3800:17-23 [Dr. Kousser did not analyze the impact of districts on African-Americans or Asians in Santa Monica]; Tr. 3752:20-26 [Vazquez, a Latino, was already sitting on the City Council in 1992]; Tr. 3752:27-3753:4 [Asha Greenberg, an Asian-American, was also elected to the City Council in 1992]; Tr. 3783:6-18, 3803:16–3804:12 [Latino registered-voter population was too small for a district or alternative at-large system to have been effective]; Tr. 3790:17–3794:8 [Latinos would not have been able to win in any district, and Latinos outside the district would have been submerged in overwhelmingly non-Latino districts].)
30:13-20 & fn. 16	This is a gross misreading of Zane's public comments at the Council meeting. Zane stated that districts might render each councilmember a parochial "case manager . . . rather than [a] policy maker," "afraid" to pass affordable housing projects in the face of "neighborhood protests." (Tr. 953:22–958:21.) He stated that he was "sympathetic with some of the views of the district elections idea" but that he wanted a system that both solved "representational issues" and addressed "the needs of the

	poor with things like affordable housing." (*Ibid.*) He therefore proposed a "hybrid" system that would, in his view, enhance minority representation *and* allow the Council to provide affordable housing for the poor. (*Ibid.*) Zane *never* expressed a desire to "continue to dump" affordable housing in Pico, nor did he ever express a desire to retain an at-large system, or move to a hybrid system rather than districts, as a means of limiting either minority or Pico Neighborhood representation. (*Ibid.*) To the contrary, in discussing his proposal for a hybrid system, Zane made clear that he thought it would both provide for a "strong Pico Neighborhood district" and that this district could be constructed to "retain, perhaps even increase, the proportion of minorities" within it as a means of avoiding any "dilution" of the "minority community there." (*Ibid.*) These statements demonstrate that Zane had *no* discriminatory intent. This is consistent with the entire discussion at the Council meeting (which was video-recorded and is in evidence as Ex. 267), as well as the context in which that discussion occurred, all of which reveal a Council, including Zane, intent on conducting a policy-based discussion of the pros and cons of various elections systems, not a Council acting with any intent to suppress minority votes. The Council, after all, had established the Charter Commission, tasked it with studying possible election changes, and scheduled a public hearing on its report recommending a change, hardly the action of a group intent on avoiding change as a means of suppressing minority votes. Like Zane, Councilwoman Judy Abdo (who also voted against districts) voiced support for increasing representation by minorities: "I am a strong proponent for finding ways to increase the minority representation on the Council, all elected bodies, and all Commissions, and have worked hard to try and do that as a Councilmember myself." (Ex. 267.) She followed, however, by explaining why policy considerations led her to believe why the City should not change to district-based elections: "I think that the downsides of the straight district system outweigh the possible advantages, the main one being that each person has only one vote once every four years and the accountability of that one person is the only link that the voter has with their elected official. As it is now, we each have the accountability as voters with seven people, three every, one two-year cycle and four the other, and I think that's an important concept." (Ex. 267.) These policy considerations were discussed in the Charter Commission's own report, which recognized them as valid concerns, not a pretext for discrimination. (Ex. 127.) Plaintiffs' contentions to the contrary rest not on what Zane actually said, but on an interpretation of his statements by Dr. Kousser that has no basis in the actual facts. Dr. Kousser's efforts to twist Zane's actual words into evidence of discriminatory intent are indicative of the bias and lack of connection to actual facts that permeated his testimony. The Court should reject Dr. Kousser's effort to ascribe discriminatory intent where there is none for the same reasons a three-judge panel consisting of Ninth Circuit Judge Stephen Reinhardt and District Judges Christine Snyder and Margaret Morrow rejected it in *Cano v. Davis*: his "statement of the conclusion is no stronger than the evidence that underlies it," and because that evidence fails to demonstrate discriminatory intent, "Dr. Kousser's statement to the contrary likewise cannot suffice." 211 F. Supp. 2d 1208, 1225 (C.D. Cal. 2002).

	The record also does not reflect that "the majority of the city's affordable housing" was located in the Pico Neighborhood. That certainly was not the case at the time of the trial. (See Ex. 1922, Tr. 4220:21–4221:16, 4249:13-17, 4250:19-28 [publicly assisted housing projects scattered throughout City, not just in Pico Neighborhood]; Tr. 1067:5-16 [Duron, a sitting member of the Rent Control Board, disagreeing with notion that most affordable housing is in in the Pico Neighborhood]; Tr. 3434:22-27, 4220:21–4221:16, 4246:20–4247:4 [O'Day and Davis, sitting councilmembers, making same point]; Tr. 4064:20-24 ["Community Corporation has established different housing units all around the City of Santa Monica"]; 4245:14–4246:3 [under the City's inclusionary housing rule, a portion of all newly developed housing must be set aside for deed-restricted affordable housing]; Tr. 4246:14-19 [rent-controlled units scattered throughout the City, not just in Pico Neighborhood].) There is no record evidence that the *Outlook* was the "chief sponsor and spokesman for the charter change" in 1946, or even that any decisionmakers (that is, the Freeholders, to whom plaintiffs assign malign intent without any evidence) *read* that newspaper, much less shared its views. The editorial from which plaintiffs quote was unsigned and in no way traceable to the Freeholders. Even if it were, it is more reasonable to read the editorial, in its entirety, as a call for civic unity rather than as some racist screed. Indeed, even the quoted portion supplied by plaintiffs does not suggest that the only "liberal-minded" people who could run for and win office under an at-large system would necessarily be white. Furthermore, the fact that the editorial addresses both labor groups and racial minorities suggests that it was addressing interest groups of all kinds, not simply racial or ethnic groups.
30:20–31:6	Councilmember Zane's statements in no way reflect racial animus. Plaintiffs' theory is ambiguous. In their closing brief, they took the position that Zane voted the way he did in order to preserve the power of Santa Monicans for Renters' Rights. The City gave several reasons in its own closing brief why that theory made no sense, including that there was no reason to believe that SMRR could not adapt to districts and that SMRR had supported both minority candidates and candidates who had backed a switch to districts. Plaintiffs now say that Zane acted "to maintain the power of his political group," but they fail to identify any political group different from SMRR. There is no "political group" to which they could be referring other than SMRR, and all the reasons cited by the City in its closing brief demonstrate that plaintiffs' theory relating to SMRR makes no sense. In particular, there are at least three reasons to doubt the theory that SMRR and districts—or SMRR and minority interests—were somehow incompatible: First, districts would not have eroded SMRR's influence; the Charter Review Commission stated that it had "no reason to believe that slate politics could not comfortably adapt to the district format." (Ex. 127 at 48; Tr. 3846:1–3847:8.) Second, after 1992, Latino voters did not perceive that their interests were being represented by the councilmembers who had backed a switch to

	districts. Holbrook favored districts (and explained at the Council hearing that he expected to win if districts were adopted, as no other incumbent lived in his district), but won roughly *zero* Latino votes in 1994; Olsen publicly opposed districts, but won roughly *all* Latino votes in 1996. (Tr. 939:14-26 [Holbrook favored districts]; Tr. 1678:16–1679:24 [Holbrook claimed he would win under a districted system, too]; Ex. 272, Tr. 3849:13–3850:19 [point estimate of Latino support for district advocate Holbrook in 1994: -108.9%]; Ex. 275, Tr. 3851:28–3852:2 [point estimate of Latino support for district opponent Olsen in 1996: 106.4%].) Third, SMRR has never been even remotely hostile to minority candidates and voters. SMRR has consistently endorsed minority candidates, including Loya and de la Torre. (E.g., Tr. 187:21-25, 1667:9-13 [Maria Loya]; Ex. 1694, Tr. 191:8-28, 1667:14-28 [Jose Escarce, Maria Leon-Vazquez, Ana Jara, and Douglas Willis]; Ex. 1697 at 4, Tr. 1659:18–1660:4 [Tony Vazquez]; Ex. 1679 at 6, Tr. 1661:16-19 [Margaret Quinones-Perez]; Ex. 1682, Ex. 1711, Tr. 2495:23-28 [Barry Snell, Oscar de la Torre]; Tr. 1048:15-18 [Duron]; see also Tr. 4039:14-26 [Jara encouraged to run for School Board by Patricia Hoffman, co-chair of SMRR].) Minorities, including Loya, have also served on SMRR's steering committee. (E.g., Tr. 189:8-15 [Loya]; Ex. 1817 at 1588, Tr. 1685:11-15 [Willis].) Nor is there any evidence of SMRR resisting districts. SMRR has endorsed many candidates who publicly favored districts, including Loya and de la Torre, and repudiated candidates who opposed districts. (Tr. 1660:3-9 [Vazquez]; Ex. 1678, Ex. 1679 at 2, Ex. 1686 at 1, Tr. 1661:7-14, 1665:9-13, 1665:27–1667:8 [Ken Genser]; 1661:26–1662:7 [Willis]; Ex. 1682 at 2, 1670:11-20 [de la Torre]; Ex. 1679 at 3, 1662:8-26 [repudiating Herb Katz, who opposed districts].) And the chair of the Charter Review Commission, which recommended the abandonment of the at-large system, was also then serving as the *co-chair* of SMRR. (Ex. 1686 at 2 [Greenstein co-chair of SMRR]; Tr. 1665:21–1666:10 [Greenstein also chair of Charter Review Commission, which recommended moving away from at-large system].) Plaintiffs cite *Garza*, where the court found intentional discrimination notwithstanding a lack of racial animus because councilmembers deliberately drew lines to minimize Latino voting influence and thereby preserve their own seats, but this case is nothing like *Garza*. Three of the four councilmembers who voted against a switch to districts, including Zane himself, did not seek reelection when their terms expired. (See Tr. 1630:10-18 [Dr. Kousser agreeing that "Mr. Zane had a discriminatory motive based on his desire to protect his city council seat"]; Tr. 1630:27–1631:25 [Zane stating at Council hearing that he was not running for reelection; Katz and Olsen likewise did not run for reelection]; Tr. 3842:7–3843:4 [explaining implied comparison between Edelman in Garza and Zane in this case is inapt because Zane never ran for reelection].)
31:7	Mr. Zane's statements were not a "smoking gun." They do not even remotely reveal discriminatory intent.
31:8-10	None of the *Arlington Heights* factors militates in favor of a finding of discriminatory intent in 1992, as the objections that follow make plain.

31:11-12	This is nonsensical. Councilmember Vazquez won under the very same system in 1990, and would win again in 2012 and in 2016. His loss was not caused by the "maintenance" of the system.
31:12-17	As noted above in response to, among other things, 17:4-21, which objections are incorporated by reference here, Vazquez lost not because of white bloc voting, but because of a lack of support from African-American and Asian voters. His defeat is therefore not of legal significance under the third *Gingles* precondition.
31:17-21	The City here incorporates by reference its objections to 28:6-9, which address plaintiffs' incorrect assertions that the City's electoral system has had a disparate impact on the Pico Neighborhood and that candidates can afford to ignore minority votes in Santa Monica. Also, the Pico Neighborhood was long majority-white. The Pico Neighborhood is not a proxy for people of color.
31:22-24	As was addressed at length above in response to 30:5-13—which objections are here incorporated by reference—it is not true that at-large elections were "well understood" in 1992 to disadvantage minorities. It is also legally irrelevant, because mere awareness of a potential disparate impact cannot support a finding of intentional discrimination. Additionally, at-large elections are not per se disadvantageous to minority voters. They can be imposed or applied in such a way that they are disadvantageous, but the very purpose of the CVRA is to distinguish problematic at-large systems from unproblematic ones. If at-large systems were per se disadvantageous to minority voters, the statute would presumably be written as a simple prohibition of at-large voting schemes rather than a multi-part and complex statute expressed in over 1,000 words.
31:24-26	Though the numbers for Dr. Leo Estrada's districts were presented, no witnesses at trial said they had seen Dr. Estrada's maps. And though Dr. Estrada said he could draw a district that was majority-Latino and African-American, no one knows what those districts looked like, or whether they conformed to the one-person-one-vote requirement. (See Tr. 3753:20–3754:13.) Even so, any such district would have fragmented the African-American and Asian populations of Santa Monica and would have been extremely harmful to those minority groups. (See Tr. 3794:23–3795:8.) Further, Latinos and African-Americans do not vote cohesively in Santa Monica, and so creation of a "coalition" district of Latinos and African-Americans would not have allowed either group to elect candidates of their choice. (See. Tr. 3796:21-3797:15.)
31:26–32:3	The historical background and events leading up to the 1992 Council decision in question undermine plaintiffs' theory that the City Council or the voters had discriminatory motives. The City had recently enacted measures beneficial to minorities, including changing the timing of its elections to coincide with national elections, prohibiting discrimination in private clubs, and requiring 30% of new construction to be set aside for affordable housing. (Tr. 3817:25–3818:22 [election timing]; Ex. 1816 at 86–87, Tr. 3819:22–3821:25 [ban on discrimination in clubs]; Ex. 1816 at 96, 3821:27–3822:11, 3433:19-25, 4220:3-7, 4245:14-21 [affordable-housing requirements].) Voters had also elected Vazquez in 1990 and

	rejected a 1988 measure that would have reinstituted designated posts. (Tr. 32823:3–3824:10 [describing Prop. J in 1988]; Ex. 1381 at 4 [Vazquez elected]; see also Tr. 1716:9–1717:5, 3802:1-10 [Greenberg, an Asian-American, elected in 1992].)
32:4-8	As has been addressed in previous objections, including in response to 31:22-24, which objections are incorporated by reference here, it was not clear to the Council that the City's electoral system was disadvantaging minorities, nor, for that matter, was it clear that any other system would do better—which is part of the reason why the Commission could not agree on a system to replace the City's current at-large method of election. Additionally, even if councilmembers were aware of a connection between the City's electoral system and minority representation, such awareness alone cannot support an Equal Protection claim.
32:9-14	Plaintiffs' claim that there were substantive and procedural departures in 1992 is unusual and unsupported, because Dr. Kousser admitted there were no such departures. (Tr. 991:6-26; see also 3834:23–3835:5 [Dr. Lichtman identified no departures either].) And the relevant legislative history also belies plaintiffs' contention that the Council discriminated against minorities in declining to put districts on the ballot. Even the Charter Review Commission did not favor districts, and for a variety of reasons, including: (i) "voting Latinos in the district might be too few to prevail, and Latinos outside the district would have less influence on the outcome than they do now"; (ii) African-Americans and Latinos in the targeted district would not vote cohesively but instead for their own candidates "in head-to-head competition," with a white candidate possibly emerging as the winner; (iii) minorities were not sufficiently concentrated for districts to make sense; (iv) voters would lose influence over six of seven councilmembers; (v) councilmembers would focus only on their own districts rather than the good of the whole City; and (vi) voters would vote only every four years instead of every two. (Ex. 127 at 45–46 [too few to prevail, less influence; lack of African-American and Latino cohesion]; *id.* at 25 [insufficiently concentrated]; *id.* at 25, 45–47, Tr. 1699:6-23, 3832:16–3833:10 [loss of influence over most councilmembers, parochialism]; Ex. 127 at 25, Tr. 1701:18-24 [elections less frequent].) The Commission also had many reservations about ranked-choice voting, expressing, among other things, "serious doubts about its practicality." (Ex. 127 at 52.)
32:14-17	*No* court has ever predicated a weighty finding of intentional discrimination on so little as plaintiffs' misinterpretation of Zane's remarks in 1992. And if the Freeholders in 1946 or councilmembers in 1992 had ever harbored a discriminatory purpose, they could have retained designated posts, prohibited bullet voting, reduced the size of the council, preserved off-year elections, and/or adopted a majority-vote requirement with runoffs. (See *Gingles*, 478 U.S. at 38, fn. 5; *Benavidez*, 2014 WL 4055366 at *21; Tr. 1315:24–1316:7, 1317:6–1318:22, 3015:2-24, 3016:4-13, 3017:4-11 [plaintiffs' experts conceding that the current system has none of these dilutive features].) They did none of those things. (Ex. 1915 [summary of key opinions on lack of discriminatory intent in 1946]; Tr. 3661:4-16 [Dr. Kousser found no evidence of discriminatory intent in the

	adoption of an election system in 1914 that was at least arguably unfavorable to minorities, but did find such evidence when the system was made demonstrably more favorable to minority voters].) There is no evidence that the City's current system of elections was adopted or maintained to discriminate against minorities.

Section VII: "REMEDIES" (page 32, lines 18 through line 36, line 2)

The City maintains that there is no basis for imposing a remedy of any kind. Indeed, the CVRA specifically allows consideration in determining the remedy of the number and concentration of minority voters, thus permitting consideration of whether Latino voters in Santa Monica are sufficiently concentrated to enable the formation of a majority-minority district. Because they are not, and because for reasons discussed above there has been no showing that they are of sufficient number for any of the alternative election systems to improve Latino voting strength, the CVRA itself compels the determination that there is no basis for imposing a remedy, a conclusion consistent with constitutional requirements as well. If there were a basis for a remedy, the parties have agreed that the Court should order a change to district-based elections. The City has contended that the Court should then order the City to propose a districting scheme for its review. Proceeding in this way would be in keeping with (1) California's Elections Code, which requires that a municipality ordered to adopt a districted system in a CVRA case draw districts with the input of its residents; (2) federal case law, which holds that the relevant legislative body must be given an opportunity to propose a remedy for judicial review; and (3) the City's status as a charter city, which requires local control over the method of elections (again, subject to judicial review).

Objectionable portion of PSOD	Specific objections/responses
32:19-20	There is no basis for a finding that the City of Santa Monica has violated either the California Voting Rights Act or the Equal Protection Clause, and therefore the Court has no cause to impose any remedy. This is a continuing objection to any and all findings of fact and/or propositions of law set out in the remedies section of the PSOD.
32:25–33:9	It may be appropriate for a court to supply a remedy where the relevant legislative body *refuses* to propose a remedy, as in *Bone Shirt*. But this is not that case. Reserving its positions that no remedy at all was appropriate, and that any order mandating a change in election system would automatically be stayed pending appeal, the City *did* propose a remedy here in its answering brief on remedies—that the Court order a change to a district-based election system, and that City be ordered to comply with

	Section 10010 of the Elections Code by holding the required series of public hearings to draw a districting plan with residents' input. That proposal was consistent not just with California law, but also with federal law. Courts adjudicating statutory vote-dilution claims generally do not fashion remedies in the first instance and instead leave the design of a remedy to the relevant legislative body, subject to judicial review and approval. Judicial relief is appropriate only where the legislative body fails to deliver a constitutionally permissible proposal. (See, e.g., *Westwego Citizens for Better Gov't v. City of Westwego* (5th Cir. 1991) 946 F.2d 1109, 1123–24 [collecting cases]; *McGhee v. Granville Cty, N.C.* (4th Cir. 1988) 860 F.2d 110, 115 [confirming that the trial court "has properly given the appropriate legislative body the first opportunity to devise an acceptable remedial plan," and holding that trial court erred in rejecting the defendant's proposed plan]; *United States v. City of Euclid* (N.D. Ohio 2007) 523 F.Supp.2d 641, 644 ["If a district court finds a defendant's method of election violates Section 2, . . . the defendant is given the first opportunity to propose a remedial plan"]; *Cane v. Worcester Cty., Md.* (D. Md. 1994) 840 F.Supp. 1081, 1091 [concluding that, "in exercising its equitable powers, the Court should give the appropriate legislative body the first opportunity to provide a plan that remedies the violation"].) "Moreover, these principles do not apply only to state legislatures: this Court has repeatedly held that it is appropriate to give affected political subdivisions at all levels of government the first opportunity to devise remedies for violations of the Voting Rights Act." (*Westwego Citizens*, *supra*, 946 F.2d at p. 1124.) In *Westwego Citizens*, for example, the court held that a city's at-large method of electing its aldermen violated Section 2 of the Voting Rights Act, but the Fifth Circuit held that "[i]t must be left to that body to develop, in the first instance, a plan which will remedy the dilution of the votes of the city's black citizens," and ordered that the trial court give the defendant city "120 days to develop and submit" a proposal. (*Ibid.*) This Court should similarly give the City of Santa Monica the first opportunity to propose a districting plan.
33:12-22	While the Court may be able to choose from a range of remedies, those remedies must address the proven injury (there is none here) and remain subject to constitutional limitations. Plaintiffs' quotation of *Jauregui* is misleading. The case holds that the remedial authority of California courts is as broad as that of federal courts in Section 2 cases, not that it is broader. The Court should not misread *Jauregui* to authorize the imposition of a remedy even where there is no evidence of vote dilution and where no remedy could enhance the voting power of the relevant minority group. Such a misreading would also impermissibly elevate racial considerations over all others, without a compelling state interest for doing so.
33:22–34:15	It is unclear, as a statutory and constitutional matter, what remedies are available to the Court, but one thing is certain: no purported remedy is authorized where it would not enhance the voting power of the relevant minority group.

	In addition, the City here observes that, under long-established California law, the filing of any appeal will result in an immediate and automatic stay of any mandatory injunction issued by this Court. (See, e.g., *Byington v. Superior Court* (1939) 14 Cal.2d 68, 71 ["It is well settled that . . . an injunction mandatory in character is automatically stayed by appeal."]; *Agric. Labor Bd. v. Superior Court* (1983) 149 Cal.App.3d 709, 716 ["California has had the rule that an appeal automatically stays mandatory injunctions for more than 100 years."].) And without a doubt, any order requiring the City to hold a special election or otherwise depart from the status quo would necessarily be mandatory in character, and thus stayed on appeal. (See, e.g., *URS Corp. v. Atkinson/Walsh Joint Venture* (2017) 15 Cal.App.5th 872, 884 [explaining that mandatory injunctions are automatically stayed "to preserve the status quo pending appeals," and an injunction is "'mandatory in effect if its enforcement would be to change the position of the parties and compel them to act in accordance with the judgment rendered'"].) In other words, the manner in which an injunction is phrased is not determinative; its effect is. And any injunction that would, for example, prohibit City Councilmembers from serving past a certain date would be prohibitory in name only (and mandatory in effect). Such an order would require the City to oust its current council—and therefore would be automatically stayed on appeal. (See, e.g., *Davenport v. Blue Cross of Cal.* (1997) 52 Cal.App.4th 435, 447 ["The substance of the injunction, not the form, determines whether it is mandatory or prohibitory," and an injunction is deemed mandatory where it "compelled affirmative action which would substantially change the parties' positions"].)
34:16-21	This is a misreading of *Jauregui*. That case holds that (1) the CVRA applies to charter cities, and to the extent a charter city's at-large electoral system conflicts with Section 14027, the charter must yield to the CVRA, and (2) the trial court in a CVRA case has the authority to enjoin certification of election results under Section 14029, notwithstanding contrary procedural statutes of general application. The case does not stand for the proposition that the CVRA necessarily displaces every provision in a city charter or the proposition that the CVRA controls over all earlier-enacted California statutes. To the extent *Jauregui* held that courts may fashion remedies for charter cities after finding that their at-large electoral systems result in vote dilution, the case was wrongly decided. There may be a statewide interest in remedying vote dilution, but there is no such interest in remedying it by court order. Charter cities should be able to fashion their own remedies, subject to judicial review. (See, e.g., *Westwego Citizens for Better Gov't v. City of Westwego* (5th Cir. 1991) 946 F.2d 1109, 1124; see also *State Bldg. & Constr. Trades Council v. City of Vista* (2012) 54 Cal.4th 547, 555 [charter city's ordinances "supersede state law with respect to 'municipal affairs.'"].)
34:22-25	Plaintiffs suggest that because the California Constitution is "supreme over state statutes," this Court's remedial analysis should be "unimpeded by state administrative statutes." They presumably are gesturing at, without citing, the provisions in the Elections Code mandating public input on

	a district plan (§ 10010) or requiring elections to be held only on certain dates (§§ 1000, 1002, 1003, 1400), which provisions have been the subject of some dispute between the parties. (The City insists that these provisions are mandatory and consistent with the CVRA and Constitution; plaintiffs' argument appears to be that the Constitution authorizes a court to disregard these and other statutory provisions whenever it sees fit.) Plaintiffs are inviting plain error. The doctrine that plaintiffs are referencing permits courts to strike down state statutes if they impinge upon constitutional rights without sufficient justification. (See, e.g., *Am. Academy of Pediatrics v. Lungren* (1997) 16 Cal.4th 307, 341 [striking down a statute that required parental consent for abortions because it intruded upon the Constitutional right of privacy, and no "compelling interest" justified such an intrusion].) But there is no authority whatsoever for the proposition that courts may impose remedies to address alleged constitutional violations without any regard for state statutes or decisional law. Nor can plaintiffs plausibly argue that the relevant Elections Code requirements are in "clear and unquestionable" conflict with the Equal Protection Clause, such that the statutes themselves could be deemed unconstitutional. (*Cal. Housing Fin. Agency v. Elliott* (1976) 17 Cal.3d 575, 594 [setting forth the proper analysis for determining whether a statute is unconstitutional].) Simply put, it is entirely possible to comply with both the Equal Protection Clause and the Elections Code by proceeding in the manner that the City has consistently proposed (that is, for the Court to order the City to follow the process laid out by Section 10010 so that the City would have the benefit of public input before drawing districts); the Court should do so.
35:8-10 (*Harvell*)	The Eighth Circuit did not affirm the trial court's rejection of defendant's plan because it would not "completely remedy the violation." The trial court "erred in reading our en banc opinion as foreclosing any election plan that included an at-large voting component," but its decision to adopt a competing plan was nevertheless not in error. (126 F.3d at 1040.)
35:26–36:2	That a remedy should be implemented promptly does *not* mean either that (1) the City should not be granted an opportunity to follow Section 10010 of the Elections Code to develop, with public input, an appropriate districting plan, or (2) any mandatory injunction issued by the trial court would not be stayed by the taking of an appeal. The cases cited by plaintiffs in their papers, including the *Williams* case cited in this portion of the PSOD, demonstrate that courts in Section 2 cases give the relevant legislative body an opportunity to propose an appropriate remedy. (For more on this issue, please refer to the City's responses to 32:25–33:9, which objections are incorporated by reference here.) In *Williams*, for example, the court did not require immediate compliance with a particular map, and instead ordered the defendant municipality to submit a legislative plan for an upcoming special election. (734 F.Supp. 1317, 1415.) The court explained that "[t]his is obviously the duty of the City Council, because this Court is not—and does not want to be—in the 'plan-drawing business.'" (*Ibid.*) The taking of an appeal automatically stays any mandatory injunction, even if the injunction is phrased as prohibitory. (For more on this issue, please refer to the City's responses to 33:22–34:15, which objections are

	incorporated by reference here.) Plaintiffs have yet to supply any reason why that rule would not apply in this case—because there is none.

Section VIII: "The Appropriate Remedy In This Case Is The Prompt Implementation Of The Seven-District Plan Presented at Trial" (page 36, line 3 through page 39, line 14)

Adopting plaintiffs' proposed remedy would be per se error. Section 10010 of the Elections Code requires that the City be given the opportunity to solicit public input through a series of hearings on a districting plan. Federal Section 2 cases and the City's status as a charter city compel the same result. If the Court adopts its tentative ruling and finds the City liable, then it ought to order the City to follow the Section 10010 process promptly.

In a case purportedly about inclusivity, it is incongruous that plaintiffs insist on the Court rubber-stamping a districting plan drawn up by an expert with the input of scarcely any Santa Monica residents. Plaintiffs' argument appears to be that the City somehow waived its right to proceed under Section 10010, but nothing in that statute indicates that the hearings it requires are optional, nor can the statute, which calls for hearings *after* a court "impose[s]" a switch to elections, be logically read to require that a city hold hearings *before* any such imposition.

Finally, plaintiffs insist that the Court may order an election to take place at any time, but this is not so for both legal and practical reasons. If the Court is intent on setting a date for a special election, it should select the first date made available under the Elections Code—November 5, 2019.

Objectionable portion of PSOD	Specific objections/responses
36:5-9	There is no evidence that alternative at-large systems (cumulative voting, limited voting, or ranked-choice voting) would enhance Latino electoral strength. Plaintiffs point to none in the PSOD. The City's objections on this issue, presented above in response to 21:10-22, are incorporated by reference here. The City maintains that no remedy is necessary or appropriate here, because there is no evidence of a violation and no evidence that any available remedy would actually improve Latino voting strength. Nevertheless, the City did state that if a remedy were necessary and appropriate, it would prefer districts over an alternative at-large scheme. The City did not state that districts are preferable because of "the local context in this case – including socioeconomic and electoral patterns" and "the voting experience of the local population." Indeed, these phrases are so ambiguous that the City cannot be sure what they mean. But the City does agree

	that districts would be preferable to alternative at-large remedies on account of "election administration practicalities." For example, it is not clear that cumulative voting is compatible with California law, nor is it clear that voting machines currently in use are capable of processing cumulative or ranked-choice ballots. A districted system, by contrast, would not require new voting machines (though it would, the City has consistently argued, decrease Latino voting strength, undermine democratic values, make elected officials less accountable to the entire electorate, and diminish the vitality of civic life throughout Santa Monica).
36:11 ("only one district plan")	The City was under no obligation to present a districting plan of its own, especially not before it had been shown to be liable under the CVRA (which, under a proper reading of the evidence and law, it still has not). What is more, the City could not have crafted a districting plan without obtaining public input through the process called for by Section 10010. Plaintiffs have suggested elsewhere that the City could have undertaken that process at any time but have yet to explain how the City was at any point obligated to do so. Plaintiffs' theory appears to be that the City waived its right to do so, which has no basis in the statutory text or anything else. In fact, following Section 10010 *after*, rather than before, an adverse judgment is precisely what the statute contemplates. By its own terms (subdivision (c)), it "applies to, but is not limited to, a proposal that is required due to a court-imposed change from an at-large method of election to a district-based election." The court cannot "impose" a "change from an at-large method of election to a district-based election" except through a judgment; there is presently no such judgment. What is more, following the Section 10010 process and holding public hearings on districts, even as the City was simultaneously vigorously litigating this CVRA case, would have done little more than confuse voters. For these reasons, the City proposed that it be allowed to follow Section 10010 after any judgment against it became final.
36:11-19	The districts drawn by Mr. Ely cannot be implemented without violating California law. Section 10010 of the Elections Code demands an inclusive, democratic process of public engagement, whereby districts are drawn and approved only after the input of City residents. No such process has been followed here, and it would be error to rubber-stamp the district map drawn by Mr. Ely. In preparing that map, Mr. Ely relied on the viewpoint of a Santa Monica resident, Patricia Crane, who is not Latina, does not reside in the Pico Neighborhood, has no expertise or experience in districting, was not selected by the electorate in any form or fashion, and indeed was a primary advocate for a recent development-related political proposal that was not adopted by the voters at the polls. (Tr. 400:14–401:6, 2685:19-23, 2687:18-2688:4, 2691:21–2692:3.) This was a far cry from the high standard of extensive community input required by the California Elections Code. Contrary to Plaintiffs' claim, race was a predominant factor in drawing the districts. As Mr. Ely conceded at trial, he drew the purported remedial Pico Neighborhood district to maximize, to the extent possible, its percentage of Latino voters. (Tr. 405:14–407:18.)
36:20-22	Such testimony, from Mr. Levitt, was irrelevant, because the jurisdictions to which he compared Santa Monica, including San Juan Capistrano,

	were not remotely comparable. Among many other differences between the two, it was possible in San Juan Capistrano to create a district where the Latino share of the voting population in the purportedly remedial district was 44 percent. Additionally, it is far from clear that even a district with a minority voting population that large is truly remedial; no court had the opportunity to take up the question, as the case was resolved by settlement. Mr. Levitt's attempt to analogize Santa Monica to Highland was similarly misplaced. Unlike in Santa Monica, the Latino population in Highland was sufficiently compact to create at least one majority-Latino district providing a remedy for the dilution alleged in that case. (Tr. 2934:13-18.) Plaintiffs had no evidence that a 30 percent Latino district could allow Latinos to elect candidates of their choice to a greater extent than they do under the current at-large system. In fact, Mr. Levitt could not identify a single judicially created district in which the citizen-voting-age population of the relevant minority group was as low as 30 percent. (Tr. 3092:24–3093:15, 3095:3-22.) And Mr. Ely conceded that this case is the first time that he had ever proposed at trial a remedial district in which the relevant minority group accounted for less than 50 percent of eligible voters. (Tr. 404:13-17.)
36:22-25	Although it was plaintiffs' practice to move to admit all other secondary sources, plaintiffs did not do so with respect to this book, or even address it on direct examination with their experts. The Court should disregard it. What is more, the book is scarcely a thorough canvass of authorities or case studies. The section cited by plaintiffs is a discussion of a voluntary—not court-ordered—districting process undertaken by the City of Pomona in which the book's author was involved. (The city had prevailed in voting-rights litigation, but some councilmembers subsequently backed districting to further their own political interests.) The author notes that an African-American candidate won election in a district that was approximately one-third African-American. The book hardly suggests, much less proves or documents, that districts with small populations of eligible minority voters will as a matter of course be able to elect candidates of their choice. That they generally will not, in fact, is obvious—and the very reason why the Supreme Court has required evidence of a constitutionally permissible majority-minority district at the outset of every Section 2 case.
36:25-27	For reasons documented several times above, including in response to 21:10-22, which objections are incorporated by reference here, plaintiffs did not prove at trial, and have not satisfactorily shown in their PSOD, that any alternative method of election would enhance Latino voting strength. Their repeated assertion to the contrary in the PSOD does not cure these evidentiary and analytical shortcomings.
37:1–37:3	The flaws in Mr. Ely's analysis have already been catalogued at length in response to 21:10-22, which objections are incorporated here by reference.

37:4-6	It is true but irrelevant that the Latino proportion is greater in the Pico Neighborhood district than in the City as a whole. It is irrelevant because the Latino citizen-voting-age population is still far too low for Latino voters to be able to elect a candidate of their choice. Mr. Levitt, plaintiffs' expert on the remedial effectiveness of their proposed district, could not identify a single judicially created district in which the citizen-voting-age population of the relevant minority group was as low as 30 percent. (Tr. 3092:24–3093:15, 3095:3-22.) This Court would be the first in the history of voting-rights litigation to create a purportedly remedial district where the relevant minority group accounted for such a low percentage of the citizen-voting-age population.
37:6-10 ("That . . . 50%,"])	Plaintiffs' invocation of *Georgia v. Ashcroft* is misplaced. That was a *Section 5* (preclearance) case, not a *Section 2* (vote dilution) case. The Supreme Court has repeatedly held that "[t]he inquiries under §§ 2 and 5 are different" and "'the lack of [influence] districts cannot establish a § 2 violation.'" (*Bartlett v. Strickland* (2009) 556 U.S. 1, 25 [collecting cases].) In other words, the Supreme Court has never set out a numerical standard for "influence" districts under Section 2. In fact, federal courts have repeatedly sounded a note of caution about the dangers of creating such districts. "Influence districts" are unconstitutional because they reflect a lack of injury—and thus a lack of any compelling state interest to classify persons on the basis of race. If Section 2 protected mere "influence," "it would unnecessarily infuse race into virtually every redistricting, raising serious constitutional questions." (*LULAC*, *supra*, 548 U.S. at p. 446.) Influence claims are inherently unmanageable, as there is no reasonable lower bound for the number of voters who could be said to "influence" the outcome of an election: "A single voter is the logical limit." (*Illinois Legislative Redist. Comm'n v. LaPaille* (N.D.Ill. 1992) 786 F.Supp. 704, 716.) Federal courts therefore reject influence districts in favor of an objective, constitutionally sound marker of injury: legally cognizable vote dilution, as shown by the possibility of a majority-minority district. "[A] minority group cannot be awarded relief on a vote dilution claim unless it can demonstrate that a challenged structure or practice impedes its ability to determine the outcome of elections." (*Dillard v. Baldwin Cty. Comm'rs* (11th Cir. 2004) 376 F.3d 1260, 1267 [rejecting influence districts as viable remedy and collecting cases showing "'influence dilution' concept . . . has been consistently rejected by other federal courts"].)
37:10-11 ("Third, . . . electoral strength")	Ambiguous. It is unclear what, if any, testimony in the record supports plaintiffs' contention that Latinos are especially "politically organized in a manner that would more likely translate to equitable electoral strength." As noted repeatedly above, Latinos account for too small a percentage of the citizen-voting-age population in any district proposed by plaintiffs, including the Pico Neighborhood district, for a districted system to increase Latino voting power. Accordingly, it is irrelevant whether Latinos in that district would or would not prove to be politically motivated; they would still require substantial crossover support from white voters to elect candidates of their choice. Because that is also true under the present system, and because there is no evidence that Latinos would have greater electoral power under plaintiffs' districted scheme, there is no injury to remedy.

37:12-13 ("Fourth, . . . Santa Monica.")	As noted in response to 19:20–20:4, which objections are incorporated by reference here, there is no evidence that Latino candidates can raise money only from other Latinos, or that Latinos have difficulty raising large sums in Santa Monica even for exogenous local offices. It is unreasonable to suppose that a minority candidate can raise money only from his or her own "community." A candidate's race or ethnicity is not determinative of the sources of his or her financial support. In any event, although white residents have higher average incomes and wealth than Latinos, that is not necessarily true of particular candidates.
37:14–38:1 ("Though . . . discussed at trial.")	As noted in the responses to 36:11, which objections are incorporated here by reference, including (1) the City was not obligated to propose a remedy at trial; (2) the City *did* comply with the Court's November 8 order and, reserving its positions that no remedy at all was appropriate, and that any order mandating a change in election system would automatically be stayed pending appeal, *did* propose a remedy in its answering brief on remedies—namely, that the Court order a change to district-based elections and order the City to follow Section 10010 of the Elections Code and order the City to hold a series of public hearings on a potential districting plan; and (3) the City could not have followed Section 10010 before the issuance of an adverse judgment, as doing so while simultaneously litigating this case would have sowed confusion among the voters.
37, fn. 17 & 38, fn. 18	As the City has noted several times, including in response to 36:11, which objections are incorporated here by reference, it was under no obligation to propose a district plan at any time before a judgment. Plaintiffs' suggestion that the City could have complied with Section 10010 in a matter of days is at odds with the very purpose of that statute—to provide for an open, democratic process for fashioning a districting plan. It makes no sense that plaintiffs would be hostile to that process, especially because one of the themes of their case is that the City's electoral system is inadequately inclusive. Scheduling meetings in quick succession over Thanksgiving week would have been a surefire recipe for obtaining almost no public input. Districts should be drawn in a thoughtful, open process, not in the dead of night without residents' voices being heard. For reasons set forth in response to 32:25-33:9 and 34:22-25 above, which objections are incorporated here by reference, there is no basis for plaintiffs argument that Section 10010 does not apply and that the Court can ignore it in imposing a remedy.
38:1-5	Plaintiffs suggest that the Court may bypass this mandatory provision and create a remedy without any input from the City because, in their telling, the City has not proposed a remedy. That is, as a factual matter, false, for the reasons explained in response to 36:11 and 37:14–38:1, which objections are incorporated by reference here. Unlike *Bone Shirt*, this is not a case in which the Court cannot, as is the general practice in vote-dilution cases, defer to the relevant legislative body to draw a districting plan for the Court's approval. The Court should follow the general practice of deference (subject to judicial supervision, of course) and, for the reasons stated in response to 32:25–33:9, which objections are incorporated here by reference, give the City the oppor-

	tunity to comply with Section 10010 of the Elections Code. That provision is mandatory and requires that the City be given a chance to draw districts with the input of residents and to present those districts to the court for approval.
38:6–39:4	For reasons explained throughout these objections, the City's electoral system is not unlawful, and therefore no remedy is appropriate. Further, any order compelling the City to hold a special election would be a mandatory injunction and would automatically be stayed by the taking of an appeal.
39:5-6	The Court should not cite a City webpage laying out the 2016 election calendar. It should instead cite the relevant law. Under Elections Code Section 12101, notice must be published not "later than the 113th day before any municipal election to fill offices." Under Section 10220, nominations for office are due no "later than the 88th day before a municipal election." Under Santa Monica Municipal Code Section 11.04.010, nominations are due no later than the "close of business on the eighty-eighth day before a municipal election."
39:7-8	The timing of the issuance of any judgment is for the Court to decide. The City requests only that the Court give full and fair consideration to these objections before entering any judgment in favor of plaintiffs, and continues to believe that any such judgment would be unwarranted and out of step with the text of and precedent interpreting the CVRA and Equal Protection Clause.
39:8-9	A special election cannot be held on the arbitrary date of July 2, 2019. Santa Monica's City Charter provides for "special municipal elections" and states that except as otherwise provided by ordinance, such elections shall be held in accordance with the provisions of the Election Code. (Santa Monica City Charter, §§ 1401, 1403.) Santa Monica's Municipal Code in turn authorizes special election dates to be set "on an established election date as provided for by the California Elections Code" or on any other date "as permitted by law." (Santa Monica Muni. Code, § 11.04.180.) Effective January 1, 2019, absent circumstances not present here, the Elections Code mandates that all municipal elections, including special elections, to fill municipal offices must be held on established election dates that, for 2019, would be March 5, 2019, or November 5, 2019. (*See* Elec. Code, §§ 1000, subd. (b) & (c), 1002, 1003, 1400.) Complying with the time requirements for nominations and other procedural prerequisites to an election (addressed above in response to 39:5-6) would render the March 5, 2019, election date impracticable. As a result, the earliest possible date for a special election to elect a new City Council would be November 5, 2019 Requiring a City Council election before November 2020 could also have other serious unintended consequences. As Dr. Lichtman explained at trial, since 1984, the City has held its elections "on cycle" in November in even-numbered years, to coincide with presidential and gubernatorial elections—previously, the City's elections had been held "off cycle," in April in odd-numbered years. (Tr. 3817:6–3818:10; see Ex. 1378-2.)

	This change to on-cycle elections was "[e]xtremely beneficial to minorities" because "[i]t is well established in the literature that elections that occur in odd numbered years significantly dampen voter turnout. . . . [T]he biggest beneficiaries in this jump in turnout are traditionally low turnout groups, notably Latinos and Asians. . . . So [holding on-cycle elections in November in even-numbered years] generally makes municipal elections more participatory and specifically helps minorities, particularly Asians and Latinos." (Trial Tr. 3818:11-3819:3.) Largely for these same reasons, the California Legislature enacted the Voter Participation Rights Act, effective January 1, 2016, which prohibits off-cycle elections in jurisdictions that experience a significant decrease in voter turnout. Elections Code section 14052 provides that "a political subdivision shall not hold an election *other than on a statewide election date* if holding an election on a nonconcurrent date has previously resulted in a significant decrease in voter turnout." (Italics added.) And, as noted above, effective January 1, 2019, a "statewide election date" must be either in November or March of an even-numbered year. (Cal. Elec. Code, § 1001.) There are two other reasons not to hold an election on July 2, 2019, even if it were lawful to do so. First, that date falls on a holiday week, and so turnout would likely be substantially dampened. Second, the City no longer has the ability to contract to conduct its own elections. The only provider of this service has gone out of business (most likely as a consequence of the new law mandating that elections be held only on two dates, on which the County of Los Angeles runs elections. As a result, the City would need to contract with the County to run an election on July 2, but the County is not scheduled to run an election on that date. The earliest available dates on which the County is scheduled to run an election are July 20 (an election for a local entity) and August 13 (a runoff for Los Angeles City Council District No. 12), but the City would have to request County authorization for any City election to be run at the same time. Additionally, as noted throughout these objections, an order to hold a special election would be a mandatory injunction automatically stayed by the taking of an appeal.
39:9-14	Any order prohibiting all current councilmembers from serving past a certain date would be prohibitory in name, but mandatory in effect, and therefore stayed by the taking of an appeal. If all councilmembers were to leave the Council, the City would be without a governing body. And because there can be no question that an order to hold a special election under a districted scheme would be stayed by the taking of an appeal, an order prohibiting councilmembers from serving past a certain date would also need to be stayed, lest the City be left in the intolerable position that it have no elected officials to make important decisions.
39:16-18	For reasons explained throughout these objections, the City's electoral system is not unlawful, and therefore no remedy is appropriate.
39:18-21	For reasons explained throughout these objections, the City should not be ordered to implement plaintiffs' seven-district map, and should instead be

	ordered to hold the series of public meetings called for by Section 10010 for the development of a districting plan.

DATED: January 18, 2019

Respectfully submitted,
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EXHIBIT A

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

PICO NEIGHBORHOOD ASSOCIATION and MARIA LOYA, Plaintiffs, v. CITY OF SANTA MONICA, Defendant.	CASE NO. BC616804 **CITY OF SANTA MONICA'S PROPOSED VERDICT FORM** Complaint Filed: April 12, 2016 Trial Date: August 1, 2018 *Assigned to Judge Yvette Palazuelos* *Dep't 28*

This proposed verdict form is designed to be read in tandem with the City's closing brief. "VF" citations in the closing brief refer to the numbered paragraphs in this proposed verdict form.

I. Plaintiffs' cause of action for violation of the California Voting Rights Act

A. Did plaintiffs prove legally significant racially polarized voting (RPV) in Santa Monica elections?

___ Yes _x_ No

(IF THE ANSWER TO QUESTION I-A IS NO, JUDGMENT ON PLAINTIFFS' CVRA CLAIM SHOULD BE ENTERED IN FAVOR OF THE CITY OF SANTA MONICA, AND THE COURT SHOULD PROCEED TO QUESTION II; IF THE ANSWER IS YES, PROCEED TO QUESTION I-B.)

To answer this question, the Court must (a) identify the Latino-preferred candidates in each relevant election through the three-step analysis described below; (b) determine whether any of those candidates lost; and (c) if any did, determine whether such candidates lost because of white bloc voting. Once those three questions are answered, the Court must determine whether white bloc voting has "usually" caused the defeat of Latino-preferred candidates, which means at least that such candidates lost more often than not. Absent such a finding, any "racially polarized voting" is not legally significant. In other words, mere differences in voting between whites and Latinos are not a sufficient basis for liability; those differences must "usually" cause the defeat of Latinos' preferred candidates.

Statement of Law (overview of legally significant RPV)

One element that plaintiffs must prove is "racially polarized voting." (Elec. Code, § 14028.) That term is defined by reference to federal case law. (*Id.*, § 14026, subd. (e).) In *Thornburg v. Gingles*, the Supreme Court set out three "preconditions" to statutory vote-dilution claims, the second and third of which define legally significant racially polarized voting. Those two preconditions are: (2) "the minority group must be able to show that it is politically cohesive," and (3) "the minority must be able to demonstrate that the white majority votes sufficiently as a bloc to enable it—in the absence of special circumstances, such as the minority candidate running unopposed—usually to defeat the minority's preferred candidate." (478 U.S. 30, 50–51, citations omitted.) Thus, to determine whether plaintiffs have proven legally significant racially polarized voting, the Court must answer three factual questions: (1) who were the Latino-preferred candidates in each election? (2) Did those candidates win or lose? (3) If they lost, did they lose because of white bloc voting? Once those three questions have been

answered, the Court will be able to determine whether "the white majority votes sufficiently as a bloc to enable it—in the absence of special circumstances, such as the minority candidate running unopposed—usually to defeat the minority's preferred candidate." (*Id.* at 51.)

1. In each relevant election, did Latinos prefer (i.e., vote cohesively for) one or more candidates? If so, which candidates?

	First Latino-preferred candidate	Second Latino-preferred candidate	Third Latino-preferred candidate	Fourth Latino-preferred candidate
1994[1]	Tony Vazquez	Bruria Finkel	Pam O'Connor	
1996	Michael Feinstein	Kelly Olsen	Ken Genser	
2002	Josefina Aranda	Kevin McKeown		
2004	Maria Loya			
2008	Ken Genser			
2012	Tony Vazquez	Terry O'Day	Ted Winterer	Gleam Davis
2016	Oscar de la Torre	Tony Vazquez		

Statement of Law (identifying Latino-preferred candidates in three steps)

"The proper identification of minority voters' representatives of . . . choice is critical." (*Collins v. City of Norfolk* (4th Cir. 1989) 883 F.2d 1232, 1237.) "[P]laintiffs must prove, on an election-by-election basis, which candidates are minority-preferred." (*Clay v. Bd. of Educ. of City of St. Louis* (8th Cir. 1996) 90 F.3d 1357, 1361.)

This analysis is not as simple as just identifying minority candidates. Justice Brennan explained in *Gingles* that the race of the candidate is irrelevant because "it is the *status* of the candidate as the *chosen representative of a particular racial group*, not the race of the candidate, that is important." (478 U.S. at 67–68 (plurality opn.).) Ever since, courts have uniformly rejected the proposition that a minority group cannot prefer a candidate of a different race or ethnicity. "Such a rule would be clearly contrary to the plurality opinion" in *Gingles*, and inconsistent with "the language of § 2." (*Sanchez v. Bond* (10th Cir. 1989) 875 F.2d 1488, 1495.) The CVRA, too, makes plain that the touchstone of the

[1] The election years are those selected by plaintiffs—namely, those in which plaintiffs identified a Latino-surnamed candidate.

racial-polarization analysis is not the race or ethnicity of the candidate, but instead the preferences of the voters; the statute therefore defines RPV in terms of voter preference, not candidate ethnicity. (§ 14026(e); see also § 14028(b) [focusing on "support . . . from members of a protected class"].)

The presumption that voters necessarily prefer candidates of their own race "would itself constitute invidious discrimination of the kind that the Voting Rights Act was enacted to eradicate, effectively disenfranchising every minority citizen who casts his or her vote for a non-minority candidate. To acquiesce in such a presumption would be not merely to resign ourselves to, but to place the imprimatur of law behind, a segregated political system. . . ." (*Lewis v. Alamance Cty., N.C.* (4th Cir. 1996) 99 F.3d 600, 607; see also *NAACP, Inc. v. City of Niagara Falls, N.Y.* (2d Cir. 1995) 65 F.3d 1002, 1016 ["declin[ing] to adopt an approach precluding the possibility that a white candidate can be the actual and legitimate choice of minority votes," as such a ruling "would project a bleak, if not hopeless, view of our society" and would "presuppose the inevitability of electoral apartheid"—a result particularly incongruous where courts are "interpreting a statute designed to implement the Fourteenth and Fifteenth Amendments to the Constitution"]; *Clay*, 90 F.3d at 1361 ["The notion that a minority candidate is the minority preferred candidate simply because of that candidate's race offends the principles of equal protection."].) In *Ruiz v. City of Santa Maria* (9th Cir. 1988) 160 F.3d 543, 551, the Ninth Circuit joined eight other circuits "in rejecting the position that the 'minority's preferred candidate' must be a member of the racial minority."

Although *Gingles* squarely rejected the "invidious" presumption that minorities can prefer only candidates of their own race or ethnicity, it did not set out clear guidelines for identifying minority-preferred candidates. Lower courts have filled in these gaps, prescribing a method of identifying Latino-preferred candidates that can be summarized in three steps.

First, the Court should identify the candidates who would have won if Latinos had been the only voters.

"In the multi-seat contests at issue here, the identification of minority-preferred candidates is complex. Because a voter can cast more than one vote, minority voters may (but will not necessarily) have a second (or third [or fourth]) candidate of choice." (*Mo. State Conf. of the NAACP v. Ferguson-Florissant Sch. Dist.* (E.D.Mo. 2016) 201 F.Supp.3d 1006, 1041.) Further complicating matters is that

some voters may choose to "single-shot" or "bullet" vote—that is, vote for a single strongly preferred candidate instead of diluting their support for that candidate by casting equally valuable votes for other candidates as well. "A critical question, then," in light of these complexities, "is how to identify whether minority voters in fact have a second or third candidate of choice in a given election." (*Ibid.*)

"[L]ooking only at the top-ranked candidate does not capture the full voting preference picture in the context of a multi-seat election because it disregards the fact that multiple seats are available in each election, and with that the possibility that minority voters prefer more than one candidate." (*Id.* at 1047.) To accommodate this possibility, many courts, including the Ninth Circuit, define as "minority-preferred" any "candidate who receives sufficient votes to be elected if the election were held only among the minority group in question." (*Ruiz v. City of Santa Maria* (9th Cir. 1988) 160 F.3d 543, 552; accord *Lewis*, 99 F.3d at 614; *Clay*, 90 F.3d at 1361–1362.) Under this approach, and based on weighted-ecological-regression estimates provided by Dr. Kousser, the City Council candidates who received sufficient votes to be elected if the election were held only among Latino voters are:

- 1994 – Vazquez (145.5%), Finkel (122.4%), O'Connor (113.2%);
- 1996 – Feinstein (149.1%), Olsen (106.4%), Genser (96.5%), Bloom (51.9%);
- 2002 – Aranda (82.6%), McKeown (76.8%), O'Connor (58.6%);
- 2004 – Loya (106%), Bloom (54.9%), Hoffman (40.0%), Genser (39.4%);
- 2008 – Genser (55.1%), Bloom (49.7%), Piera-Avila (33.3%), Rubin (20.9%);
- 2012 – Vazquez (92.7%), O'Day (63.9%), Winterer (56.7%), G. Davis (50.2%); and
- 2016 – de la Torre (88.0%), Vazquez (78.3%), O'Day (55.3%), G. Davis (43.8%).

Second, the Court should determine whether any of the identified candidates received "significantly" higher support than others.

Identifying all the candidates who received sufficient votes from the relevant minority group is not the end of the analysis, because sometimes that group might prefer one or more of those candidates more strongly than others. For that reason, courts have held that it is error to "treat[] as 'minority-preferred' successful candidates who had significantly less [minority] support than their unsuccessful opponents." (*Niagara*, 65 F.3d at 1017.) Conversely, "if the unsuccessful candidate who was the first

choice among minority voters did not receive a 'significantly higher percentage' of the minority community's support than did other candidates . . . , then the latter should also be viewed . . . as minority-preferred candidates." (*Levy v. Lexington Cty.* (4th Cir. 2009) 589 F.3d 708, 716; see also *Niagara*, 65 F.3d at 1018 [although black voters' top choice lost, "support for that candidate was not dramatically higher than support for one of the successful candidates," such that "there is therefore no reason to discount the 1975 general election"].) "The level of support that may properly be deemed 'substantial' will vary … depending on the number of candidates on the ballot and the number of seats to be filled." (*Lewis*, 99 F.3d at 614, fn. 11; see also *Levy*, 589 F.3d at 716–717 [rejecting trial court's unsupported conclusion that a 15-percentage-point difference was "significant" and remanding for the court to consider the context of each election before deciding meaning of "significant"].) Applying this approach, based on Dr. Kousser's weighted-ecological-regression estimates, eliminates seven candidacies in Plaintiffs' seven selected elections:

- **1994**: none eliminated (three candidates, including Vazquez, have point estimates over 100%);
- **1996**: Bloom (52%) eliminated, as three candidates have point estimates near or above 100%;
- **2002**: O'Connor eliminated (Aranda and McKeown win a significantly higher share of votes, and Aranda loses);
- **2004**: Bloom (55%), Hoffman (40%), and Genser (39%) eliminated because Loya wins a significantly higher share of Latino votes (106%) and loses;
- **2008**: none eliminated (top four candidates have point estimates between 21% and 55%);
- **2012**: none eliminated (Latinos' top four candidates all win); and
- **2016**: O'Day and Davis eliminated (de la Torre and Vazquez win a significantly higher share of votes, and de la Torre loses)

Third, the Court should disregard candidates who won such a small share of the Latino vote that they cannot reasonably be described as "Latino-preferred." Some courts hold that candidates cannot be minority-preferred unless they win at least 50% of the minority group's votes. (E.g., *Niagara*, 65 F.3d at 1019.) Others qualify that rule by holding that candidates winning less than 50% could be deemed minority-preferred, but only given further qualitative evidence that they were the representatives of choice for the minority group. (E.g., *Lewis*, 99 F.3d at 614.)

Following a bright-line rule that a candidate must win at least 50% of the minority vote to be considered minority-preferred—or at least a rule that a candidate winning less than 50% of the minority vote is not necessarily minority-preferred—has two key advantages. First, it avoids the "unavoidably malleable, highly subjective inquiry" of "assess[ing] candidates' authenticity in matters racial." (*Niagara*, 65 F.3d at 1018–1019.) Second, the rule "prevents a candidate with tepid minority support from being considered in a *Gingles* prong three analysis"; without such a backstop, courts would "open[] the door for candidates only marginally favored by minority voters to count in the *Gingles* equation." (*Ruiz*, 160 F.3d at 561 (Hawkins, J., concurring in part and dissenting in part) [criticizing majority opinion for not adopting a 50% cutoff in addition to bright-line rule that minority-preferred candidates are those who would have won had members of that minority group been the only voters].) This step removes Bloom, Piera-Avila, and Rubin in 2008 (who all fell short of the 50% threshold).

As a result, after all three steps in the analysis are completed, the Latino-preferred candidates in each of the seven elections selected by Plaintiffs are:

- 1994 – Vazquez (145.5%), Finkel (122.4%), O'Connor (113.2%);
- 1996 – Feinstein (149.1%), Olsen (106.4%), Genser (96.5%);
- 2002 – Aranda (82.6%), McKeown (76.8%);
- 2004 – Loya (106%);
- 2008 – Genser (55.1%);
- 2012 – Vazquez (92.7%), O'Day (63.9%), Winterer (56.7%), G. Davis (50.2%); and
- 2016 – de la Torre (88.0%), Vazquez (78.3%)

Evidence Admitted

(to support City's position on the identification of Latino-preferred candidates in three steps)

1. Tr. 1199:14–1208:1 (Dr. Kousser counting a white candidate as "Latino-preferred" in the *Highland* case); Tr. 3052:12-14, 3060:19-21 (Mr. Levitt agreeing that white candidates can be Latino-preferred, and that there can be more than one Latino-preferred candidate in an election).

2. Ex. 275 (point estimates of Latino support for three white candidates, Feinstein, Olsen, and Genser, range from 96.5% to 149.1%, whereas point estimate of Latino support for Alvarez is 22.2%); Tr. 757:18-27 (Dr. Kousser focusing on Alvarez); see also Tr. 754:2-9, 769:23-25, 804:18-21 (Dr.

Kousser interpreting results near or above 100% to mean that the candidate appeared on roughly all Latino ballots); Tr. 3057:23–3059:18 (Mr. Levitt agreeing that roughly all Latino voters supported three white candidates).

3. Ex. 284, Tr. 1780:26–1781:4, 3070:7–3071:5 (point estimate of Latino support for Piera-Avila is 33.3%, less than the point estimate of Latino support for two white candidates, Bloom (49.7%) and Genser (55.1%)).

4. Tr. 1782:5-12 (top four); Tr. 776:14–778:12 (strategic voting).

5. Ex. 281 (point estimate of Latino support for Loya is 106%); Ex. 287 (point estimate of Latino support for Vazquez is 93%); Ex. 290 (point estimates of Latino support for Vazquez and de la Torre are 78% and 88%, respectively).

6. Ex. 1653A at 29–30 (point estimate of Latino support for McKeown is 52%, whereas point estimate for Muntaner is just 8%); see also Ex. 302 at 131 (Muntaner appears on Census Bureau's list of Latino surnames).

7. Ex. 1652 at 72, Ex. 1653A at 21–30, Tr. 2313:2-10, 2315:23–2316:1 (Dr. Lewis's ER estimates); see also Ex. 1652A at 2, Ex. 1653A at 43–47, Tr. 2319:20–2320:6 (Dr. Lewis's EI estimates); see also Ex. 272, Ex. 275, Ex. 278, Ex. 281, Ex. 284, Ex. 287, Ex. 290 (Dr. Kousser's ER estimates).

8. Tr. 4303:17-20, 4305:19–4306:26, 4350:9–4360:5 (colloquy and evidence under Evid. Code, § 1311).

9. Tr. 727:4-11, 3030:9-12.

10. Compare Ex. 272, Ex. 275, Ex. 278, Ex. 281, Ex. 284, Ex. 287, Ex. 290 (Dr. Kousser's weighted-ER estimates), with Ex. 1653A at 26–30 (Dr. Lewis's weighted-ER estimates). The parties disagree not on the numbers themselves, but on how to interpret them.

11. Ex. 278 (confidence interval for Aranda ranges from 57.9% to 107.3%; confidence interval for McKeown ranges from 31.7% to 121.9%); Tr. 3064:12-21 (Mr. Levitt agreeing that there is "substantial overlap between Ms. Aranda and Mr. McKeown's support from the Latino electorate").

12. Tr. 2024:27–2025:18, 2038:19–2039:10, 2063:11–2064:21, 2297:10-17.

13. Tr. 2230:26–2236:11 (ER and EI depend on assumptions that, if wrong, bias their results),

2238:2-22 (ER depends on assumption that all politics is ethnic; neighborhood model depends on assumption that all politics is local); Tr. 2241:6-17 (no difference in the two methods apart from these competing assumptions); Ex. 1652 at 58, 61–62, Tr. 2249:12–2258:3, 2278:17-26 (showing ER, EI, and the neighborhood model are all inaccurate through differences between modeling estimates and real-world results); Tr. 2242:8–2243:24, 2253:4-13, 2273:27–2274:5 (ER overvalues ethnicity, neighborhood model undervalues it, and the truth is somewhere in between); see also Ex. 1652 at 51, Tr. 370:16–371:11, 371:21-26, 372:16-19, 374:14-17, 2266:6–2270:21 (surname matching another source of systematic bias).

14. Ex. 272; Ex. 275; Ex. 278; Ex. 281; Ex. 284; Ex. 287; Ex. 290.

15. Ex. 284.

16. Ex. 284 (Dr. Kousser's model); Ex. 1653A at 27 (Dr. Lewis's model).

2. Did plaintiffs prove that the white majority has voted sufficiently as a bloc to enable it usually to defeat Latino voters' preferred candidates?

___ Yes x No

To answer this question, the Court must determine whether the candidates identified in the exercise above as Latino-preferred lost and, if so, whether they lost because of white bloc voting. Unless white bloc voting has "usually" caused the defeat of Latino-preferred candidates, which means at least that such candidates lost more often than not, any "racially polarized voting" is not legally significant. In other words, mere differences in voting between whites and Latinos are not a sufficient basis for liability; those differences must "usually" cause the defeat of Latinos' preferred candidates.

	# of Latino-preferred candidate(s)	**# of Latino-preferred candidates who lost**	**# of Latino-preferred candidates who arguably lost because of white bloc voting**
1994	3 (Vazquez, Finkel, O'Connor)	2 (Vazquez, Finkel)	0
1996	3 (Feinstein, Olsen, Genser)	1 (Olsen)	0
2002	2 (Aranda, McKeown)	1 (Aranda)	1 (Aranda)

2004	1 (Loya)	1 (Loya)	1 (Loya)
2008	1 (Genser)	0	0
2012	4 (Vazquez, O'Day, Winterer, G. Davis)	0	0
2016	2 (de la Torre, Vazquez)	1 (de la Torre)	1 (de la Torre)
Total	**16**	**6**	**3**

(IF LATINO-PREFERRED CANDIDATES DID NOT "USUALLY" LOSE BECAUSE OF WHITE BLOC VOTING, THEN QUESTION I-A ABOVE SHOULD BE ANSWERED NO, JUDGMENT ON PLAINTIFFS' CVRA CLAIM SHOULD BE ENTERED IN FAVOR OF THE CITY OF SANTA MONICA, AND THE COURT SHOULD PROCEED TO QUESTION II.)

Statement of Law

(Has white bloc voting usually caused the defeat of Latino-preferred candidates?)

"In establishing [the third *Gingles* precondition], the minority group demonstrates that submergence in a white multimember district impedes its ability to elect its chosen representatives." (*Gingles*, 478 U.S. at 51.) In other words, the third *Gingles* factor is satisfied where the differences in voting patterns between the majority and minority groups result in the defeat of minority-preferred candidates. (See, e.g., *Nipper v. Smith* (11th Cir. 1994) 39 F.3d 1494, 1533 ["to be actionable, the electoral defeat at issue must come at the hands of a cohesive white majority"]; *Uno v. City of Holyoke* (1st Cir. 1995) 72 F.3d 973, 980 ["The third *Gingles* precondition—which embodies a showing that the majority votes sufficiently as a bloc to enable it, in the ordinary course, to trounce minority-preferred candidates most of the time [citation]—addresses whether the challenged practice, procedure, or structure is the cause of the minority group's inability to mobilize its potential voting power and elect its preferred candidates."]; *Salas v. Sw. Tex. Jr. Coll. Dist.* (5th Cir. 1992) 964 F.2d 1542, 1554–1555 ["the third *Gingles* precondition requires an inquiry into the causal relationship between the challenged practice and the lack of electoral success by the protected class voters. First, is voting polarized along racial lines? Second, given that the protected class voters are the registered voter majority in the district, is their inability to elect their preferred representatives caused primarily by racial bloc voting or, instead, by other circumstances which the [Voting Rights] Act does not redress?"].)

In determining whether the third *Gingles* precondition is satisfied, courts have required plaintiffs to show a regular pattern of minority electoral defeat—and more than a showing that minority-preferred candidates have lost a mere preponderance of elections on account of racially polarized voting. (See, e.g., *Lewis v. Alamance Cty., N.C.* (4th Cir. 1996) 99 F.3d 600, 606 & fn. 4 [the *Gingles* Court, in using the terms "usually," "normally," and "generally," "mean[t] something more than just 51%"]; see also *Clarke v. City of Cincinnati* (6th Cir. 1994) 40 F.3d 807, 812–813 [47% success rate for black-preferred candidates inadequate to demonstrate that those candidates were "usually" defeated].) Under any colorable definition of "usually," plaintiffs must show, at a minimum, that a white bloc defeats a Latino-preferred candidate "more often than not." (See *Williams v. State Bd. of Elec.* (N.D.Ill. 1989) 718 F. Supp. 1324, 1328 & fn. 5 [relying on dictionary definition of "usually"].)

Any lesser showing—for example, a showing not that minority-preferred candidates usually lose because of white bloc voting, but that minorities and whites typically vote in different ways—would be inadequate under both the CVRA and the federal law it incorporates. Section 14027 requires proof of "impair[ment]" or "dilution," and Section 14028 emphasizes the extent to which minority-preferred candidates "have been elected." Courts also have rejected a conception of RPV that "focuses exclusively on the relative percentage of Latino and white voters who chose the Latino candidate," but "fails to address whether the percentage of white . . . voters who voted against that candidate was sufficient to defeat him or her." (*Cano v. Davis* (C.D.Cal. 2002) 211 F.Supp.2d 1208, 1238 & fn. 34 (three-judge panel).).

Failure to prove legally significant RPV necessarily dooms a statutory vote-dilution claim. (E.g., *Pope v. Cty. of Albany* (2d Cir. 2012) 687 F.3d 565, 582 [denying preliminary injunction because plaintiffs' election analysis was incomplete and failed to take into account success of black candidates]; *Kingman Park Civic Ass'n v. Williams* (D.C. Cir. 2003) 348 F.3d 1033, 1043 [granting summary judgment for failure of proof as to second and third *Gingles* preconditions]; *Clay*, 90 F.3d at 1361 [affirming dismissal of § 2 claim because plaintiffs failed to "identify the minority preferred candidates and show that, due to majority bloc voting, they usually are not elected," instead wrongly assuming that the minority-preferred candidates must themselves be minorities]; *Rollins v. Fort Bend Ind. Sch. Dist.* (5th Cir. 1996) 89 F.3d 1205, 1218, 1223–24 [affirming judgment in favor of defendant in part because of

lack of proof that white bloc voting caused electoral defeat]; *Houston v. Haley* (5th Cir. 1988) 859 F.2d 341, 346 ["Although the district court found that only one black individual has run for alderman in Oxford and that no black has been elected to the office, no evidence indicates that either result was produced by racial polarization."]; see also *Gingles*, 478 U.S. at 48, fn. 15 ["if difficulty in electing and white bloc voting are not proved, minority voters have not established that the multimember structure interferes with their ability to elect their preferred candidates"].)

Evidence Admitted

(to support City's position that white bloc voting has not usually caused the defeat of Latino-preferred candidates)

17. E.g., Tr. 752:13-28, 755:26–756:2, 1329:1–1330:19.

18. Ex. 272; Tr. 752:13-28, 756:6-12.

19. Tr. 825:2-6, 826:19-25.

20. Ex. 272 (point estimate of white support for Vazquez third-highest, at 34.9%); Tr. 1337:10-25, 2308:11-16 (if only Latinos had voted, Vazquez, Finkel, and O'Connor would have won); Tr. 1339:24–1340:25, 2309:17-26, 2312:2-13, 3053:23–3054:19 (no statistically significant difference in white vote for Holbrook, Ebner, Vazquez, and Finkel); Tr. 3053:9-22 (no statistically significant difference in Latino vote for O'Connor, Vazquez, and Finkel).

21. Ex. 272.

22. Each election is briefly illustrated below using the following exhibits (Dr. Kousser's weighted-ER analyses of the 1994, 1996, 2002, 2004, 2008, 2012, and 2016 elections): Ex. 272; Ex. 275; Ex. 278; Ex. 281; Ex. 284; Ex. 287; Ex. 290.

1994 (Ex. 272)

Candidate	Latino	Asian	Est. Black	Est. Non-Hispanic White	Actual %
Bob Holbrook	-108.9 (38.6)	371.7 (70.7)	37.7 (20.6)	34.4 (2.6)	36.5
Pam O'Connor	113.2 (27.3)	-177.9 (50.0)	5.6 (14.5)	40.1 (1.8)	36.3
Ruth Ebner	-103.5 (32.7)	323.5 (60.0)	44.5 (17.4)	34.4 (2.2)	35.7
Tony Vazquez	145.5 (28.0)	-209.4 (51.2)	19.2 (14.9)	34.9 (1.9)	33.2
Bruria Finkel	122.4 (28.4)	-234.8 (52.0)	5.1 (15.1)	37.6 (1.9)	33.0
Matthew P. Kann	-81.3 (30.8)	260.1 (56.4)	25.5 (16.4)	23.1 (2.1)	24.4
Bob Knonovet	-6.4 (7.5)	50.8 (13.8)	5.4 (4.0)	8.7 (0.5)	8.9
Ron Taylor	51.3 (6.1)	-35.7 (11.2)	9.9 (3.2)	4.8 (0.4)	6.3
John Stevens	37.4 (5.6)	9.8 (10.3)	3.1 (3.0)	3.6 (0.4)	5.6
Wallace Peoples	8.5 (6.7)	42.0 (12.3)	12.0 (3.6)	3.5 (0.5)	5.3
Joe Sole	11.8 (3.9)	-2.7 (7.2)	1.2 (2.1)	2.9 (0.3)	3.2

Vazquez and Finkel, two Latino-preferred candidates, were defeated not by white bloc voting, but by a lack of black and Asian support. Had only whites and Latinos voted, Finkel and Vazquez would have won, as they are estimated to have received the largest shares of Latino votes (122.4% and 145.5%, respectively) and the second- and third-largest shares of white votes (37.6% and 34.9%, respectively) in a three-seat election. Additionally, Latino support for Vazquez is not statistically significantly different from that for O'Connor and Finkel, and white support for Vazquez is not statistically significantly different from that for Holbrook, O'Connor, Ebner, and Finkel. (In other words, the 95%-confidence intervals overlap. Those intervals are calculated by multiplying the standard errors, denoted in parentheses above, by 1.96. The result is added to or subtracted from the point estimate. Thus, for example, Vazquez is estimated to have won somewhere between 31.2% and 38.6% of white votes.)

1996 (Ex. 275)

Candidate	Latino	Asian	Est. Black	Est. Non-Hispanic White	Actual %
Michael Feinstein	149.1 (25.0)	-259.7 (57.1)	-3.6 (18.9)	41.5 (2.2)	36.4
Asha S. Greenberg	-114.1 (30.5)	312.4 (69.5)	78.2 (23.0)	34.7 (2.7)	36.2
Ken Genser	96.5 (20.3)	-147.0 (46.3)	1.2 (15.3)	37.9 (1.8)	33.9
Paul Rosenstein	48.1 (12.0)	33.4 (27.3)	26.3 (9.0)	31.7 (1.1)	32.6
Kelly Olsen	106.4 (20.6)	-121.1 (47.0)	-7.5 (15.6)	32.7 (1.8)	30.6
Frank D. Schwengel	-91.9 (28.8)	282.7 (65.6)	57.8 (21.7)	28.3 (2.5)	30.3
Shari L. Davis	-63.2 (24.3)	175.8 (55.4)	42.1 (18.3)	26.1 (2.1)	26.0
Donna Dailey Alvarez	22.2 (12.9)	160.3 (29.4)	34.5 (9.7)	15.8 (1.1)	22.0
Richard Bloom	51.9 (12.9)	28.5 (29.4)	-3.6 (9.7)	10.0 (1.1)	12.9
Susan L. Mearns	32.6 (6.9)	-38.3 (15.7)	-0.8 (5.2)	10.8 (0.6)	10.0
Jeffrey Hughes	14.7 (4.7)	-18.8 (10.8)	-0.7 (3.6)	7.7 (0.4)	6.9
Jonathan Metzger	0.6 (3.8)	19.2 (8.6)	6.4 (2.8)	4.9 (0.3)	5.2
Larry Swieboda	-1.1 (3.0)	2.0 (6.9)	4.4 (2.3)	3.2 (0.3)	2.9

Voting was not racially polarized in this election. Accordingly, no Latino-preferred candidate could have been defeated by white bloc voting. (Note also that the Latino-surnamed candidate, Alvarez, was not Latino-preferred, as she would not have won had only Latinos voted.)

2002 (Ex. 278)

Candidate	Latino	Asian	Est. Black	Est. Non-Hispanic White	Actual %
Pam O'Connor	58.6 (22.8)	-27.0 (51.2)	25.1 (31.2)	46.2 (2.4)	43.4
Kevin McKeown	76.8 (23.0)	-21.9 (51.7)	12.9 (31.5)	44.3 (2.4)	42.8
Bob Holbrook	-31.2 (29.1)	179.7 (65.4)	49.0 (39.9)	34.6 (3.0)	36.2
Abby Arnold	45.8 (17.9)	-45.1 (40.2)	16.3 (24.5)	38.9 (1.9)	35.2
Matteo Dinolfo	-9.2 (23.1)	100.4 (51.9)	22.5 (31.7)	26.9 (2.4)	27.1
Josefina S. Aranda	82.6 (12.6)	24.4 (28.2)	10.6 (17.2)	16.5 (1.3)	21.3
Chuck Allord	-5.6 (10.1)	22.9 (22.8)	8.3 (13.9)	10.9 (1.1)	10.1
Jerry Rubin	6.0 (7.8)	-20.4 (17.6)	16.9 (10.7)	8.9 (0.8)	7.8
Pro Se	16.5 (5.9)	-12.5 (13.3)	15.7 (8.1)	4.9 (0.6)	5.4

In this election, Aranda was arguably defeated by white bloc voting. There is, as Dr. Kousser observed, a statistically significant difference between Latino and white support for Aranda. And unlike in the case of Vazquez in 1994, Aranda lost because she did not receive adequate support from white voters.

2004 (Ex. 281)

Candidate	Latino	Asian	Est. Black	Est. Non-Hispanic White	Actual %
Bobby Shriver	23.6 (20.3)	45.3 (60.0)	-3.6 (26.9)	51.5 (3.3)	16.5*
Richard Bloom	54.9 (13.8)	-19.4 (40.8)	23.7 (18.3)	35.2 (2.3)	11.8*
Herb Katz	5.1 (22.5)	121.7 (66.5)	-5.8 (29.9)	27.8 (3.7)	10.3*
Ken Genser	39.4 (13.6)	-9.4 (40.2)	21.8 (18.1)	28.2 (2.2)	9.4*
Patricia Hoffman	40.0 (13.1)	-31.7 (38.7)	24.9 (17.4)	27.3 (2.1)	8.9
Matt Dinolfo	-1.4 (23.9)	66.6 (70.6)	-7.7 (31.7)	25.1 (3.9)	8.3
Maria Loya	106.0 (12.3)	-74.0 (36.5)	19.2 (16.4)	21.2 (2.0)	8.1
Kathryn J. Morea	4.1 (16.6)	15.9 (49.1)	6.0 (22.1)	21.8 (2.7)	6.9
Michael Feinstein	28.2 (9.6)	2.4 (28.3)	12.1 (12.7)	16.0 (1.6)	5.6
David Cole	1.3 (3.8)	60.2 (11.3)	7.2 (5.1)	6.2 (0.6)	3.0
Leticia M. Anderson	15.6 (4.1)	11.7 (12.0)	11.2 (5.4)	5.5 (0.7)	2.4
Bill Bauer	3.2 (4.3)	38.9 (12.6)	7.7 (5.6)	5.2 (0.7)	2.4
L. Mendelsohn	0.9 (3.2)	38.1 (9.4)	12.8 (4.2)	5.0 (0.5)	2.3
Tom Viscount	11.6 (4.5)	-0.3 (13.4)	5.3 (6.0)	5.4 (0.7)	2.0
Jonathan Mann	3.7 (2.5)	13.7 (7.4)	4.2 (3.3)	3.0 (0.4)	1.3
Linda Armstrong	4.6 (1.8)	13.1 (5.3)	4.8 (2.4)	1.1 (0.3)	0.7

As with Aranda in 2002, Loya was arguably defeated by white bloc voting in 2004. There is, as Dr. Kousser observed, a statistically significant difference between Latino and white support for Loya. And unlike in the case of Vazquez in 1994, Loya lost because she did not receive adequate support from white voters.

2008 (Ex. 284)

Candidate	Latino	Asian	Est. Black	Est. Non-Hispanic White	Actual %
Bobby Shriver	-4.5 (15.7)	38.0 (40.2)	60.5 (20.0)	52.7 (2.5)	47.7
Richard Bloom	49.7 (8.0)	12.0 (20.4)	43.5 (10.1)	40.2 (1.2)	39.7
Ken Genser	55.1 (9.5)	-6.3 (24.2)	32.5 (12.0)	38.8 (1.5)	37.6
Herb Katz	7.0 (13.1)	86.5 (33.5)	48.8 (16.7)	32.3 (2.0)	33.7
Ted Winterer	16.9 (11.1)	-8.0 (28.4)	37.8 (14.1)	25.6 (1.7)	23.6
Susan Hartley	20.7 (9.0)	58.9 (23.0)	23.8 (11.4)	16.7 (1.4)	19.5
Michael Kovac	3.2 (5.3)	16.0 (13.6)	23.6 (6.8)	12.6 (0.8)	12.4
Jerry Rubin	20.9 (6.6)	-3.4 (16.8)	19.5 (8.4)	11.6 (1.0)	11.9
Linda M. Piera-Avila	33.3 (5.2)	27.3 (13.4)	6.4 (6.7)	5.7 (0.8)	9.1
Herbert Silverstein	0.4 (5.1)	4.6 (13.0)	4.3 (6.5)	7.7 (0.8)	6.8
John Blakely	5.2 (3.8)	11.1 (9.6)	10.6 (4.8)	4.9 (0.6)	5.5
Jon Louis Mann	9.3 (3.2)	16.4 (8.2)	6.4 (4.1)	3.4 (0.5)	4.7
Linda Armstrong	14.0 (2.4)	19.1 (6.2)	4.4 (3.1)	2.9 (0.4)	4.7

At least according to these estimates from Dr. Kousser, there is only one Latino-preferred candidate in this election—Genser, who is the only candidate estimated to have finished with more than 50% of the Latino vote. And Genser won. (The only Latino-surnamed candidate, Piera-Avila, was not preferred by Latino voters, as only 33.3% of Latino voters voted for her.)

2012 (Ex. 287)

Candidate	Latino	Asian	Est. Black	Est. Non-Hispanic White	Actual %
Ted Winterer	56.7 (14.9)	-16.0 (53.3)	-4.7 (18.2)	40.9 (3.3)	36.9
Terry O'Day	63.9 (8.0)	-32.8 (28.8)	36.0 (9.8)	37.3 (1.8)	35.7
Gleam Davis	50.2 (8.2)	-19.6 (29.3)	36.3 (10.0)	32.9 (1.8)	31.7
Tony Vazquez	92.7 (9.0)	23.9 (32.2)	7.1 (11.0)	19.1 (2.0)	24.9
Shari Davis	1.6 (12.3)	57.2 (44.1)	11.3 (15.0)	23.2 (2.7)	22.6
Richard McKinnon	5.0 (9.6)	41.4 (34.6)	4.2 (11.8)	17.1 (2.1)	16.7
John Cyrus Smith	8.7 (4.8)	78.9 (17.2)	11.6 (5.9)	10.2 (1.1)	14.0
Frank Gruber	15.1 (11.2)	55.9 (40.0)	-18.3 (13.6)	11.7 (2.4)	12.9
Jonathan Mann	19.8 (4.5)	-0.4 (16.2)	15.8 (5.5)	10.2 (1.0)	10.7
Bob Seldon	-11.0 (7.5)	96.3 (26.7)	7.0 (9.1)	5.4 (1.6)	8.9
Armen Melkonians	-0.6 (4.0)	25.8 (14.2)	18.8 (4.9)	7.4 (0.9)	8.3
Terence Later	-0.5 (5.6)	7.2 (20.2)	10.0 (6.9)	8.6 (1.2)	7.8
Jerry Rubin	9.5 (3.4)	-15.5 (12.3)	11.1 (4.2)	7.2 (0.8)	6.4
Robert Gomez	30.4 (3.3)	14.7 (11.8)	8.2 (4.0)	2.9 (0.7)	6.1
Steve Duron	5.0 (2.6)	16.8 (9.4)	5.0 (3.2)	4.4 (0.6)	5.1

All four Latino-preferred candidates (Vazquez, Winterer, O'Day, and Davis) won. It is therefore legally irrelevant that there is a statistically significant difference between Latino support and white support for both Vazquez and O'Day.

2016 (Ex. 290)

Candidate	Latino	Asian	Est. Black	Est. Non-Hispanic White	Actual %
Terry O'Day	55.3 (6.2)	4.6 (22.4)	21.0 (8.2)	38.7 (1.6)	37.3
Tony Vazquez	78.3 (9.0)	-20.4 (32.5)	12.3 (11.8)	36.6 (2.3)	35.7
Ted Winterer	38.1 (10.9)	-54.4 (39.3)	5.3 (14.3)	43.3 (2.7)	35.1
Gleam Davis	43.8 (7.6)	-12.6 (27.5)	24.4 (10.0)	37.6 (1.9)	34.5
Armen Melkonians	8.8 (9.6)	80.1 (34.6)	10.0 (12.6)	22.9 (2.4)	24.4
Oscar de la Torre	88.0 (6.0)	43.2 (21.8)	20.2 (7.9)	12.9 (1.5)	21.8
James T. Watson	0.8 (5.1)	24.6 (18.4)	28.8 (6.7)	11.2 (1.3)	11.9
Mende Smith	11.5 (4.5)	12.6 (16.2)	14.4 (5.9)	9.5 (1.1)	10.1
Terence Later	1.4 (4.7)	22.9 (17.0)	6.1 (6.2)	10.1 (1.2)	9.9
Jonathan Mann	9.6 (3.1)	5.0 (11.4)	7.6 (4.1)	7.7 (0.8)	7.7

As with Aranda in 2002 and Loya in 2004, de la Torre was arguably defeated by white bloc voting in 2016. There is, as Dr. Kousser observed, a statistically significant difference between Latino and white support for de la Torre. And unlike in the case of Vazquez in 1994, de la Torre lost because he did not receive adequate support from white voters.

23. E.g., Ex. 1203 (ad); Ex. 1706 (SMRR endorsement); Tr. 2500:16–2513:19 (testimony concerning de la Torre's efforts in his prior campaigns).

24. E.g., Tr. 194:20–196:4 (Loya); Tr. 3411:6–3420:28 (O'Day).

25. E.g., Ex. 1204, Tr. 2516:1–2517:28, 2518:12-17, 2520:10-20 (de la Torre entered race late and decided not to seek any endorsements); Tr. 2522:17–2523:25 (quickly ceased fundraising efforts); Tr. 2524:26–2527:19 (although he claimed at deposition to have used a candidate-control committee, he could not account for the fact that the City has no record of any such committee); Tr. 3423:13-25, 3427:8-137 (O'Day never saw de la Torre canvassing for votes or at candidate forums, though O'Day observed de la Torre doing such things for his School Board campaigns); Tr. 4050:18–4051:14 (Jara, who had campaigned on behalf of de la Torre in School Board elections, did not believe he was interested in winning a Council seat).

26. Ex. 275 (Alvarez); Ex. 287 (Gomez and Duron).

27. Tr. 1324:4-19, 1326:7–22, 1353:19–1355:7.

28. Ex. 1652 at 72, Tr. 2315:3–2316:28 (ER); Ex. 1652A at 2, Tr. 2320:7–2321:10 (EI).

29. Ex. 1652 at 74 (187), 76 (209), 78 (227), 79 (54); Tr. 2293:17-24, 3033:10-13(187); Tr. 2296:4-8, 3036:4-23 (209); Tr. 2300:1-22, 3043:27–3044:6 (227), 2302:14-21, 3045:27–3048:26 (54).

30. Ex. 1653A at 26, Tr. 2304:23–2306:17 (ER); see also Ex. 1652A at 2, Tr. 2321:1-10 (EI).

31. Pl. Br. at 9–10 (listing candidates); Ex. 1387 at 3 (de la Torre elected in 2002); Ex. 1389 at 3 (Leon-Vazquez, Escarce, and Quinones-Perez elected in 2004); Ex. 1390 at 4 (de la Torre elected in 2006); Ex. 1391 at 3 (Leon-Vazquez, Escarce, and Quinones-Perez elected in 2008); Ex. 1392 at 3 (de la Torre elected in 2010); Ex. 1393 at 2 (Leon-Vazquez and Escarce elected in 2012); Ex. 1394 at 4 (de la Torre and Duron elected in 2014); Ex. 1557 at 21 (Quinones-Perez elected in 2016).

B. Did plaintiffs prove that Latino votes have been diluted by Santa Monica's at-large method of election?

___ Yes _x_ No

(IF THE ANSWER TO QUESTION I-B, WHICH HAS BEEN DIVIDED INTO TWO SUB-PARTS BELOW, IS NO, JUDGMENT ON PLAINTIFFS' CVRA CLAIM SHOULD BE ENTERED IN FAVOR OF THE CITY OF SANTA MONICA.)

1. Have plaintiffs proven vote dilution by showing that Latinos would have a greater opportunity to elect candidates of their choice under an alternative electoral system?

___Yes _x_ No

Statement of Law

A public entity violates the CVRA only if its at-large method of election "impairs the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election, as a result of the dilution or the abridgment of the rights of voters who are members of a protected class." (§ 14027.) Courts interpreting similar language in § 2 of the FVRA require proof of harm (vote dilution) and causation (a connection between the harm and the electoral system). (E.g., *Gingles*, 478

U.S. at 48, fn. 15 [plaintiffs must "demonstrate[] a substantial inability to elect caused by the use of a multimember district"]; *Gonzalez v. Ariz.* (9th Cir. 2012) 677 F.3d 383, 405 ["proof of [a] 'causal connection between the challenged voting practice and a prohibited discriminatory result' is crucial," and "a § 2 challenge 'based purely on a showing of some relevant statistical disparity between minorities and whites,' without any evidence that the challenged voting qualification causes that disparity, will be rejected"]; *Aldasoro v. Kennerson* (S.D.Cal. 1995) 922 F.Supp. 339, 369, fn. 10 ["The single, underlying theme of all three *Thornburg* preconditions is *causality* in that the at-large system must be responsible for minority electoral defeat—minority electoral defeat must be caused by the at-large system."].) California courts have stated, but not yet held, that the CVRA similarly demands proof of vote dilution caused by an election system. (*Rey v. Madera Unified Sch. Dist.* (2012) 203 Cal.App.4th 1223, 1229 ["both federal and California law create liability for vote dilution"]; *Jauregui v. City of Palmdale* (2014) 226 Cal.App.4th 781, 802 ["Sections 14025 through 14032 allow citizens to challenge city-wide elections and, on*ly if there is vote dilution*, permit a court to impose reasonable remedies to alleviate the problem."]; *Sanchez v. City of Modesto* (2006) 145 Cal.App.4th 660, 666 [CVRA "gives a cause of action to members of any racial or ethnic group that can establish that its members' votes are diluted though the combination of racially polarized voting and an at-large election system"].)

To prove vote dilution, a plaintiff must show that a protected class would have greater opportunity to elect candidates of its choice under some other electoral system, which serves as a "benchmark" for comparison. (See, e.g., *Reno v. Bossier Parish Sch. Bd.* (1997) 520 U.S. 471, 480 ["Because the very concept of vote dilution implies—and, indeed, necessitates—the existence of an 'undiluted' practice against which the fact of dilution may be measured, a § 2 plaintiff must also postulate a reasonable alternative voting practice to serve as the benchmark 'undiluted' voting practice."]; *Holder v. Hall* (1994) 512 U.S. 874, 880 (plurality opn.) ["a court must find a reasonable alternative practice as a benchmark against which to measure the existing voting practice"]; *Gingles*, 478 U.S. at 50, fn. 17 ["Unless minority voters possess the *potential* to elect representatives in the absence of the challenged structure or practice, they cannot claim to have been injured by that structure or practice."].) "[I]n order to decide whether an electoral system has made it harder for minority voters to elect the candidates they prefer, a court must have an idea in mind of how hard it 'should' be for minority voters to

elect their preferred candidates under an acceptable system." (*Gingles*, 478 U.S. at 88 (O'Connor, J., concurring).)

The "protected voting group" should have "a voting opportunity that relates favorably to the group's population in the jurisdiction for which the election is being held." (*Smith v. Brunswick Cty., Va., Bd. of Supervisors* (4th Cir. 1993) 984 F.2d 1393, 1400.) But the key word is "opportunity"—"while a plan must provide a meaningful 'opportunity to exercise an electoral power that is commensurate with its population,' that is not the same as a guarantee of success"; to the contrary, "a necessary part of equal participation is the possibility of a loss." (*United States v. Euclid City Sch. Bd.* (N.D.Ohio 2009) 632 F.Supp.2d 740, 752.) "[T]he ultimate right of § 2 is equality of opportunity, not a guarantee of electoral success for minority-preferred candidates of whatever race." (*Johnson v. De Grandy* (1994) 512 U.S. 997, 1014, fn. 11.)

Where comparison to any reasonable benchmark reveals that a protected class's votes are not being diluted—i.e., where that class already has a voting opportunity that relates favorably to its population—there is no legal requirement to jettison an at-large system; "there neither has been a wrong nor can be a remedy." (*Emison v. Growe* (1993) 507 U.S. 25, 40–41.) Any requirement to abandon an at-large method of election despite a lack of vote dilution would violate the federal constitution. (See, e.g., *Bartlett v. Strickland* (2009) 556 U.S. 1, 21 (plurality); *LULAC v. Perry* (2006) 548 U.S. 399, 446 (opn. of Kennedy, J.); U.S. Const., am. XIV.)

Evidence Admitted (to support City's position that there is no vote dilution in Santa Monica)

32. Tr. 3080:21-26, 3085:28–3086:9.

33. Tr. 395:19–396:6 (Latino CVAP in Mr. Ely's proposed "Pico" district is 30%); Tr. 1931:1-1935:21 (arithmethic upper limit of Latino share of CVAP in any district, however configured, is well under 50%).

34. Tr. 283:6-12 (Mr. Ely relying on CVAP figures); Ex. 162, Ex. 163, Ex. 1209 at 10, Tr. 288:15-22 (Latino CVAP in Mr. Ely's proposed district is 30%).

35. Tr. 3092:24–3093:15, 3095:3-22.

36. Ex. 1209 at 12–14 (Ely declaration explaining analysis); Ex. 164, Tr. 290:24–291:6 (1994);

Ex. 166, Tr. 292:13–293:2 (2004); Ex. 168, Tr. 294:27–295:26 (2016).

37. Ex. 1209 at 12–13; Tr. 289:14–290:23.

38. Tr. 440:4-12, 459:20–460:7; see also Tr. 1614:23-25 (Dr. Kousser admitting that how voters would vote in a districted system is uncertain).

39. Ex. 159 (map of Council candidates' residences); Tr. 420:12-20, 460:2-7 (Mr. Ely familiar with districted systems requiring a majority of votes to win and holding runoffs where no candidate secures a majority on the first ballot); Tr. 430:18–431:10 (Mr. Ely assumed that candidates would need to reside in the district where they run); Tr. 437:27–438:2, 459:15-19 (candidates would be different in a districted election because of the residency requirement); 3100:25-28 (Mr. Levitt agreeing that the candidates who run in districted elections tend not to be the same candidates who run in at-large elections).

40. Tr. 3097:15–3098:13.

41. Tr. 3134:4-10.

42. E.g., Tr. 1936:25–1937:11, 2942:23–2943:7, 3091:17-23.

43. Ex. 1304 at 3; Tr. 451:11-23, 3397:6-13.

Ex. 1304 at 3

(Mr. Ely's estimate of vote totals in the hypothetical Pico District in 2016)

	2016		
	Min	Max	Share
BALLOTS	3899	6123	4806
ODAY	1470	2237	1807
WATSON	442	792	582
WINTERER	1093	1699	1354
VAZQUEZ	1580	2287	1906
SMITH	392	655	503
DELATORRE	1559	2046	1763
DAVIS	1297	1986	1591
LATER	310	529	410
MELKONIANS	766	1222	951
MANN	327	510	384

44. Tr. 428:6–429:2, 460:20–463:27, 465:2-15.

45. Ex. 1399 at 22 (Alvarez received 8,693, more than half of the 12,713 votes won by the fourth-place finisher, Rosenstein); Ex. 1387 at 14 (Aranda received 6,579 votes, more than half of the 11,164 votes won by the third-place finisher, Holbrook); Ex. 1393 at 3 (Vazquez received 11,939 votes—

enough to win).

46. Compare Ex. 1304 (Mr. Ely's seven election analyses), with Ex. 1399 (1996 election results), Ex. 1387 (2002 election results), Ex. 1391 (2008 election results), Ex. 1393 (2012 election results); Tr. 463:25–464:18 (Alvarez received fifth-most votes in hypothetical district in 1996); Tr. 465:2–466:10 (Aranda received third-most votes in hypothetical district in 2002); Tr. 466:22–468:7 (Piera-Avila received seventh- or eighth-most votes in hypothetical district in 2008); Tr. 468:10–471:8 (Vazquez received second- or third-most votes in hypothetical district, even though he was elected in actual at-large election).

47. Tr. 468:10–471:8; Ex. 1304 at 2; Ex. 1393 at 3.

48. Compare Ex. 1304 (Mr. Ely's seven election analyses), with (a) Ex. 1399 (1996 election results; top three vote-getters in the district are Feinstein, Genser, and Rosenstein, who prevailed citywide); (b) Ex. 1387 (2002 election results; top two vote-getters in the district are McKeown and O'Connor, who both prevailed citywide); (c) Ex. 1391 (2008 election results; top four vote-getters in the district are Bloom, Genser, Katz, and Shriver, who all prevailed citywide); and (d) Ex. 1393 (2012 election results; top four vote-getters in the district are Davis, O'Day, Vazquez, and Winterer, who all prevailed citywide).

49. Tr. 3794:23–3795:11, 3796:20–3797:15.

50. Ex. 272 (Ebner); Ex. 275 (Greenberg); Ex. 278 (Holbrook); Ex. 284 (Shriver); Ex. 287 (Davis); see also Tr. 3800:14–3801:28 (Dr. Kousser left Asians and African-Americans out of his analysis).

51. Tr. 2959:8–2960:10, 2978:9-15.

52. Tr. 3116:21–3117:2.

53. Ex. 1652 at 21 (in no election are more than 9 percent of the voters Latino, and Latinos never comprise as much as 45 percent of the voters in any precinct in any election); Ex. 1796, Tr. 3757:2-11 (falloff between Latino population and registered voting population is 60 percent); see also, e.g., Ex. 278 (top three point estimates of Latino support in 2002 range from 58.6% to 82.6%); Ex. 284 (top four point estimates of Latino support in 2008 range from 20.9% to 55.1%); Ex. 287 (top four point estimates of Latino support in 2012 range from 50.2% to 92.7%).

(IF THERE IS NO AVAILABLE ALTERNATIVE ELECTION SYSTEM UNDER WHICH LATINO VOTERS WOULD HAVE A GREATER OPPORTUNITY TO ELECT CANDIDATES OF THEIR CHOICE, THEN THERE CANNOT BE VOTE DILUTION, QUESTION I-B ABOVE SHOULD BE ANSWERED NO, AND JUDGMENT ON PLAINTIFFS' CVRA CLAIM SHOULD BE ENTERED IN FAVOR OF THE CITY OF SANTA MONICA; IF PLAINTIFFS HAVE PROVEN THAT LATINO VOTERS WOULD HAVE A GREATER OPPORTUNITY TO ELECT CANDIDATES OF THEIR CHOICE UNDER AN ALTERNATIVE ELECTION SYSTEM, THEN THE COURT SHOULD PROCEED TO SUBPART 2 BELOW AND DETERMINE ITS ANSWER TO QUESTION I-B BASED ON ITS ANSWER TO SUBPART 2 AND ITS CONSIDERATION OF ALL THE EVIDENCE.)

2. Have plaintiffs proven vote dilution through secondary evidence?

___ Yes x No

Statement of Law (secondary evidence of vote dilution)

Section 2 of the federal Voting Rights Act was amended in 1982, largely in response to a Supreme Court decision holding that Section 2 plaintiffs must show that an election system was intentionally adopted or maintained for a discriminatory purpose. (*City of Mobile v. Bolden* (1980) 446 U.S. 55.) "Congress substantially revised § 2 to make clear that a violation could be proved by showing discriminatory effect alone and to establish as the relevant legal standard the 'results test'" previously used by the Supreme Court and circuit courts. (*Gingles*, 478 U.S. at 35.) Accompanying the bill amending section 2 was a Senate Judiciary Committee Report that "elaborate[d] on the circumstances that might be probative of a § 2 violation." (*Id.* at 36.)[2]

[2] Those circumstances, now known as the "Senate factors," are:

"1. the extent of any history of official discrimination in the state or political subdivision that touched the right of the members of the minority group to register, to vote, or otherwise to participate in the democratic process;

"2. the extent to which voting in the elections of the state or political subdivision is racially polarized;

"3. the extent to which the state or political subdivision has used unusually large election districts, majority vote requirements, anti-single shot provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group;

"4. if there is a candidate slating process, whether the members of the minority group have been denied access to that process;

"5. the extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process;

The CVRA follows the lead of federal law, providing in § 14028(e) that five non-exclusive factors "are probative, but not necessary factors to establish a violation" of the statute. Those factors closely track the Senate factors: "the history of discrimination, the use of electoral devices or other voting practices or procedures that may enhance the dilutive effects of at-large elections, denial of access to those processes determining which groups of candidates will receive financial or other support in a given election, the extent to which members of a protected class bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process, and the use of overt or subtle racial appeals in political campaigns."

Federal courts have long made clear that the Senate factors should be considered only if a Section 2 plaintiff has already satisfied the *Gingles* preconditions. The Supreme Court held as much in *Gingles* itself: "While many or all of the factors listed in the Senate Report may be relevant to a claim of vote dilution through submergence in multimember districts, unless there is a conjunction of the following circumstances [namely, the three *Gingles* preconditions], the use of multimember districts generally will not impede the ability of minority voters to elect representatives of their choice." (478 U.S. at 48.) The Court further explained that "if difficulty in electing and white bloc voting are not proved, minority voters have not established that the multimember structure interferes with their ability to elect their preferred candidates." (*Id.* at 48, fn. 15.) And evidence relating to the Senate factors cannot bridge the evidentiary gap: "Minority voters may be able to prove that they still suffer social and economic effects of past discrimination . . ., but they have not demonstrated a substantial inability

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"6. whether political campaigns have been characterized by overt or subtle racial appeals;

"7. the extent to which members of the minority group have been elected to public office in the jurisdiction.

"Additional factors that in some cases have had probative value as part of plaintiffs' evidence to establish a violation are:

"whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group.

"whether the policy underlying the state or political subdivision's use of such voting qualification, prerequisite to voting, or standard, practice or procedure is tenuous."

(S. Rep. No. 97–417 (1982) 97th Cong. 2d Sess. at pp. 28–29.)

to elect caused by the use of a multimember district." (*Ibid.*)

Other federal courts have likewise consistently held that failure to prove any of the *Gingles* preconditions is fatal to a Section 2 plaintiff's claim. Here are but a few examples:

- *Johnson v. Hamrick* (11th Cir. 1999) 196 F.3d 1216, 1220: "If one or more of the *Gingles* factors is not shown, then the defendants prevail. If all three factors are shown, then the district court must review all relevant evidence under the totality of the circumstances."

- *McNeil v. Springfield Park Dist.* (7th Cir. 1988) 851 F.2d 937, 942: "Only upon satisfaction of these threshold criteria should a court conduct its totality-of-the-circumstances analysis and consider other relevant factors. . . ."

- *Aldasoro*, 922 F.Supp. at 368: "If any one of these three preconditions is not met, there is no need to consider the totality of the circumstances or the presence of the 'Senate factors'. . . . The Senate factors are now of secondary relevance and only must be considered if plaintiffs prove each of *Thornburg*'s three preconditions."

- *Clark v. Holbrook* Unified *Sch. Dist. No. 3 of Navajo Cty*. (D.Ariz. 1988) 703 F. Supp. 56, 59: "Plaintiff must first establish these preconditions before the Court will consider the . . . factors."

Courts adjudicating CVRA claims therefore ought to follow federal courts' lead in declining to reach any collateral issues of disputed fact under Section 14028(e) if plaintiffs have not proven the existence of racially polarized voting under the second and third *Gingles* preconditions.

Finally, the CVRA, like the FVRA, is designed to remedy minority vote dilution. (See *Rey*, 203 Cal.App.4th at 1229 ["To protect against a voting system that impairs the minority voters' opportunity to participate in the political process, both federal and California law create liability for vote dilution"]; *Jauregui*, 226 Cal.App.4th at 798 ["City-wide elections where there is no vote dilution are not in actual conflict with section 14027"]; *Sanchez*, *supra*, 145 Cal.App.4th at 686 ["liability . . . is imposed because of dilution of the plaintiffs' votes"].) Evidence that does not bear on the question whether Latino votes have been diluted is irrelevant.

Evidence Admitted (to support City's position: there is no secondary evidence of vote dilution)

54. Tr. 1935:22–1937:1.

55. Ex. 1277, Tr. 387:14-26 (Pico "similar" to other neighborhoods with respect to average incomes); Ex. 1278, Tr. 388:16–389:2 (percentage of renters in Pico not much different from percentage in other neighborhoods); Ex. 1280, Tr. 389:23–390:6 (percentage of single-family homes in Pico is

"roughly equivalent" to that in other neighborhoods).

56. Tr. 3904:14-24.

57. Ex. 127 at 25, Tr. 1701:18-24, 3594:25–3595:4 (concerns, including on the part of the Charter Review Commission, about City holding elections only every four years); Tr. 3804:3-6 (confusion); see also Tr. 2886:22-24 (most cities stagger their elections).

58. E.g., Tr. 4319:21–4322:3 (running requires pulling papers, paying a $25 fee, and securing 100 signatures, and the City provides different ways "for people to get their message out for free," including through the City's website and a spot on public-access TV).

59. E.g., Tr. 196:20-22 (Maria Loya spent $34,000 on a College Board campaign); Ex. 1202, Tr. 2509:23-26 (Oscar de la Torre spent between $14,000 and $35,000 on each of his School Board campaigns); Tr. 2710:11-15 (Craig Foster spent $93,000 on a School Board campaign); Tr. 2710:16-26 (Nimish Patel spent a similar amount on his own School Board campaign; Tr. 2711:2-4 ("typical" amounts spent on School Board campaigns are $40,000 to $50,000); Ex. 1387 at 3 (de la Torre victorious in 2002); Ex. 1389 at 3 (Maria Leon-Vazquez, Jose Escarce, and Margaret Quinones-Perez victorious in 2004); Ex. 1390 at 4 (de la Torre victorious in 2006); Ex. 1391 at 3 (Leon-Vazquez, Escarce, and Quinones-Perez victorious in 2008); Ex. 1392 at 3–4 (de la Torre and Gleam Davis victorious in 2010); Ex. 1393 at 3 (Leon-Vazquez, Escarce, Tony Vazquez, and Davis victorious in 2012); Ex. 1394 at 4 (de la Torre and Steve Duron victorious in 2014); Ex. 1557 at 3–8, 15–21 (Quinones-Perez, Vazquez, and Davis victorious in 2016).

60. Tr. 4209:6-15, 4315:12–4316:13 (Council does not operate schools); Ex. 1399 at 3 (Margaret Franco reelected in 1996); Ex. 1397 at 3 (Escarce elected in 2000); Ex. 1387 at 3 (de la Torre elected in 2002); Ex. 1389 at 3 (Escarce reelected, Leon-Vazquez elected in 2004); Ex. 1390 at 4 (de la Torre reelected in 2006); Ex. 1391 at 3 (Escarce and Leon-Vazquez reelected in 2008); Ex. 1392 at 3 (de la Torre reelected in 2010); Ex. 1393 at 3 (Leon-Vazquez and Escarce reelected in 2012); Ex. 1394 at 4 (de la Torre reelected in 2014); see also Tr. 4209:16-25 (noting people of color on School Board).

61. E.g., Tr. 1581:3-8, 3671:18-25 (no racial appeals for defeat of Prop. 3 in 1975); Tr. 3672:12-23 (*Outlook* endorsed multiple minority candidates in 1975, including Trives); Tr. 4041:11-16 (Jara recalled no racial appeals in the 2004 election cycle).

62. Tr. 4182:19–4185:1 (describing history of area), 4435:18-23 ("The reason that those items happen to be in the Pico neighborhood doesn't have anything to do with a decision that was made about let's try and impose a burden on one particular neighborhood. That was an industrial area where it was appropriate to do that kind of work.").

63. Tr. 4293:10-18 (Metro directly acquired former Verizon maintenance yard, and "once they made the decision to do that private deal, there was nothing the City could do").

64. Tr. 3598:11–3599:5.

65. Tr. 4197:26–4202:21 (City has "continually monitor[ed] the park" through expert consultants "for at least 20 years"; experts operate and maintain abatement systems and provide regular reports to the Council and regulatory authorities; City has never been out of compliance with regulations); see also Tr. 3470:28–3471:4, 3472:20-22 ("regular monitoring"); Tr. 3474:6-16 (Council's role is to provide "policy oversight," not to hire staff and directly oversee monitoring).

66. Tr. 234:5–235:22, 2620:13–2625:10, 3457:3-9, 3463:5-16, 3464:3-10, 4027:24–4029:18, 4274:1–4276:13, 4283:24–4284:27, 4285:24–4288:27 (Virginia Avenue Park); Tr. 228:24–229:28, 2626:21-24, 4276:14–4283:18, Ex. 1841 (Pico Library); Ex. 1661 at 2–5, Tr. 226:27–227:15, 228:21-23, 2635:18-24, 2638:21-28, 2636:8-10, 2637:12–2639:22 (Ishihara Park); Tr. 3399:15–3402:8, 4258:17–4262:25 (MANGo); Tr. 3458:2-13 (Memorial Park); Tr. 2633:11–2634:24, 4166:24–4167:15 (vocational programs at City Yards).

67. Tr. 3564:15–3565:5 (strategic planning process to maintain diversity through affordable housing, rent control, and direct subsidies); Tr. 4208:16–4209:5 (direct-subsidy program); Ex. 1922, Tr. 4218:1–4221:16 (rent control and affordable housing); see also Tr. 3563:27–3564:7, 4213:5–4217:2 (goal is to "reduce the pressure on existing housing units" with new construction that does not displace current residents).

(IF PLAINTIFFS HAVE NOT PROVEN VOTE DILUTION IN ANY WAY, THEN QUESTION I-B ABOVE SHOULD BE ANSWERED NO, AND JUDGMENT ON PLAINTIFFS' CVRA CLAIM SHOULD BE ENTERED IN FAVOR OF THE CITY OF SANTA MONICA.)

II. Plaintiffs' Cause of Action for Violation of the Equal Protection Clause of the California Constitution

A. Did plaintiffs prove that Santa Monica's method of election has caused a disparate impact on minority voters in the form of vote dilution?

___ Yes _x_ No

(IF THE ANSWER TO QUESTION II-A IS NO, JUDGMENT ON PLAINTIFFS' EQUAL PROTECTION CLAIM SHOULD BE ENTERED IN FAVOR OF THE CITY OF SANTA MONICA.)

Statement of Law (disparate impact)

To prevail on their Equal Protection claim, plaintiffs must demonstrate that the City's at-large electoral system has caused a disparate impact that was intended by the relevant decisionmakers. (*Rogers v. Lodge* (1982) 458 U.S. 613, 617; *Johnson v. DeSoto Cty. Bd. of Comm'rs* (11th Cir. 2000) 204 F.3d 1335, 1343–1346; *Cano*, 211 F.Supp.2d at 1245.) In other words, constitutional vote-dilution claims are proven in the same way as any other Equal Protection claims—through evidence of disparate impact, causation, and discriminatory intent. (*Rogers*, 458 U.S. at 617.)[3] Each is necessary but insufficient on its own. Disparate impact alone does not establish a constitutional violation. (*Washington v. Davis* (1976) 426 U.S. 229, 239.) To the contrary, a plaintiff must demonstrate both that the challenged enactment caused the disparate impact and that the relevant decisionmakers intended such an impact. (*Personnel Adm'r v. Feeney* (1979) 442 U.S. at 273–274, 279.) Nor is discriminatory intent alone enough. (*Palmer v. Thompson* (1971) 403 U.S. 217, 224 ["no case in this Court has held that a legislative act may violate equal protection solely because of the motivations of the men who voted for it"]; *Lucas*, 967 F.2d at 551 ["To prevail on their claims of violations of the Fifteenth Amendment and the Equal Protection Clause of the Fourteenth Amendment, plaintiffs had to prove first that vote dilution, as a special form of discriminatory effect, exists and second, that it results from a racially discriminatory purpose chargeable to the state."]; *Cano*, 211 F.Supp.2d at 1248 ["We do not, however, rest

[3] The relevant California decisional law tracks federal law. (See *Jauregui*, 226 Cal.App.4th at 800 ["California decisions involving voting issues quite closely follow federal Fourteenth Amendment analysis."]; *Hull v. Cason* (1981) 114 Cal.App.3d 344, 372–374 ["[t]he equal protection standards of the Fourteenth Amendment, and of the state's Constitution, are substantially the same"]; *Sanchez v. State* (2009) 179 Cal.App.4th 467, 487 [citing federal law for elements of Equal Protection claim]; *Kim v. Workers' Comp. Appeals Bd.* (1999) 73 Cal.App.4th 1357, 1361 [same].)

our grant of summary judgment on the lack of invidious intent, for even if the plaintiffs could establish such intent, they have failed to offer proof of the necessary dilutive effects. Plaintiffs in an intentional vote dilution case still bear the burden of proving a dilutive effect."].) Finally, even if plaintiffs in a vote-dilution case have shown both discriminatory intent and disparate impact, they may nevertheless "fail[] to establish their constitutional claims [if] the record fails to show that the inequality of opportunity results from the . . . current electoral system." (*Johnson*, 204 F.3d at 1345–1346; see also *Feeney*, 442 U.S. at 272 [disparate impact must be traceable to discriminatory purpose]; *Martinez v. Bush* (S.D.Fla. 2002) 234 F.Supp.2d 1275, 1335 [in constitutional vote-dilution cases, there is a "burden placed on plaintiffs of establishing a causal link between their injury and the challenged legislation"].)

Disparate impact in an Equal Protection analysis is proven in the same way as vote dilution in a CVRA or FVRA analysis—through evidence that a protected class would have greater electoral opportunity given the adoption of some other method of election. (*Johnson*, 204 F.3d at 1344 ["the Supreme Court, historically, has articulated the same general standard, governing the proof of injury, in both section 2 and constitutional vote dilution cases"; *Lowery v. Deal* (N.D.Ga. 2012) 850 F.Supp.2d 1326, 1331 ["the requirements to establish that vote dilution has occurred (separate from any discriminatory intent) are the same under" Section 2 and the Equal Protection Clause]; *Lopez v. City of Houston* (S.D.Tex. May 22, 2009) 2009 WL 1456487, at *19 ["a benchmark is required for Equal Protection . . . vote dilution claims"]; cf. also *Bossier*, 528 U.S. at 334 [constitutional claims of racial discrimination require "comparison . . . with a hypothetical alternative"]; *Meza v. Galvin* (D.Mass. 2004) 322 F.Supp.2d 52, 74–75 ["failure to establish a § 2 claim is generally considered *mutatis mutandis* fatal to constitutional claims because the latter, unlike the former, require proof of discriminatory intent"].) Because the standard for proving vote dilution even in federal cases "was intended to be more permissive than the constitutional standard" (*Johnson*, 204 F.3d at 1344), and because the CVRA is, in turn, a liberalized version of section 2 of the FVRA, a plaintiff who has failed to show vote dilution in furtherance of a CVRA claim cannot, *a fortiori*, make the requisite showing of disparate impact in furtherance of an Equal Protection claim. (See, e.g., *Lopez*, 2009 WL 1456487 at *18 ["plaintiffs' failure to state a viable § 2 claim also forecloses their ability to obtain relief under the Equal Protection Clause"]; *Broward Citizens for Fair Dists. v. Broward Cty.* (S.D.Fla. Apr. 3, 2012) 2012 WL 1110053,

at *9 [same].)

Evidence Admitted (to support City's position that there is no evidence of a disparate impact)

68. Tr. 1936:25–1937:11, 2942:23–2943:25, 3091:17–3092:23; 3111:11-13.

69. See, e.g., Ex. 1300 at 59 (population by race or ethnicity over time); Ex. 1786A at 30, Tr. 1945:27–1948:11 (population by race or ethnicity over time in Census Tract encompassing much of the Pico Neighborhood).

70. Tr. 3247:2-3251:11.

71. Ex. 1816 at 477 (member and secretary of Board of Freeholders "pointed out that the opportunity for representation of minority groups has been increased two and a half times over the present charter by expansion of the City Council from three to seven members"); *id.* at 444 (another Board member contended that "seven councilmen are almost certain to assure better geographic representation than the three council members now elected"); see also, e.g., 3260:4–3267:16 (Dr. Lichtman explaining why contemporary observers were correct in their view that Charter benefited minorities).

(IF PLAINTIFFS HAVE FAILED TO PROVE VOTE DILUTION, THEN QUESTION II-A ABOVE SHOULD BE ANSWERED NO, AND JUDGMENT ON PLAINTIFFS' EQUAL PROTECTION CLAIM SHOULD BE ENTERED IN FAVOR OF THE CITY OF SANTA MONICA.)

B. Did plaintiffs prove that the relevant decisionmakers affirmatively intended to discriminate against minority voters by adopting and maintaining the current at-large election system?

___ Yes x No

(IF THE ANSWER TO QUESTION II-B IS NO, JUDGMENT ON PLAINTIFFS' EQUAL PROTECTION CLAIM SHOULD BE ENTERED IN FAVOR OF THE CITY OF SANTA MONICA.)

Statement of Law (discriminatory intent)

The Statement of Law under Section II.A is incorporated here by reference. A further discussion of the requirement of proof of intentional discrimination follows.

Whereas a statutory vote-dilution claim depends only on the results of an at-large system, a constitutional vote-dilution claim also requires proof that those results were intended by the relevant

decisionmakers. (See, e.g., *City of Mobile v. Bolden* (1980) 446 U.S. 55, 66–67, superseded by statute on other grounds [rule that "only if there is purposeful discrimination can there be a violation of the Equal Protection Clause" "applies to claims of racial discrimination affecting voting just as it does to other claims or racial discrimination"]; *Osburn v. Cox* (11th Cir. 2004) 369 F.3d 1283, 1288 ["To establish a Fourteenth Amendment claim, the Plaintiffs must not only plead that they lack the equal opportunity to participate in the political process, but must also demonstrate that this inequality results from the open primary system and that a racially discriminatory purpose underlies that system."].) The intent analysis is "a complex task requiring 'a sensitive inquiry into such circumstantial and direct evidence of intent as may be available.'" (*Bossier*, 520 U.S. at 488.) The leading case on "[d]etermining whether invidious discriminatory purpose was a motivating factor" behind a challenged decision is *Village of Arlington Heights v. Metropolitan Housing Development Corp.* (1977) 429 U.S. 252, 266, which identified five nonexhaustive factors that might support an inference that a challenged enactment was motivated by discrimination: (1) "[t]he impact of the official action"—i.e., "whether it 'bears more heavily on one race than another'"; (2) "[t]he historical background of the decision . . . , particularly if it reveals a series of official actions taken for invidious purposes"; (3) "[t]he specific sequence of events leading up to the challenged decision"; (4) "[d]epartures from the normal procedural sequence" or "[s]ubstantive departures"; and (5) "[t]he legislative or administrative history . . . , especially where there are contemporary statements by members of the decisionmaking body, minutes of its meetings, or reports." (429 U.S. at 266–268.)

Mere awareness that an act may result in a disparate impact on minorities in insufficient to prove a violation of the Equal Protection Clause. The Supreme Court rejected that theory decades ago, holding that "'[d]iscriminatory purpose' . . . implies more than intent as volition or intent as awareness of consequences. [Citation.] It implies that the decisionmaker . . . selected or reaffirmed a particular course of action at least in part 'because of,' not merely 'in spite of,' its adverse effects upon an identifiable group." (*Feeney*, 442 U.S. at 279; see also *Columbus Bd. of Educ. v. Penick* (1979) 443 U.S. 449, 464 ["disparate impact and foreseeable consequences, without more, do not establish a constitutional violation"].) Federal and California courts have quoted and applied this holding ever since. (E.g., *SECSYS, LLC v. Vigil* (10th Cir. 2012) 666 F.3d 678, 685; *Soto v. Flores* (1st Cir. 1997) 103 F.3d

1056, 1067; *David K. v. Lane* (7th Cir. 1988) 839 F.2d 1265, 1272; *People v. Superior Court* (1992) 8 Cal.App.4th at 711.)[4] And courts have applied *Feeney*'s evidentiary requirement of purposeful discrimination—and rejected the theory that mere awareness of consequences is enough to prove it—in vote-dilution cases like this one. (E.g., *Bolden*, 446 U.S. at 71, fn. 17 ["if the District Court meant that the state legislature may be presumed to have 'intended' that there would be no Negro Commissioners, simply because that was a foreseeable consequence of at-large voting, it applied an incorrect legal standard," citing *Feeney*, 442 U.S. at 279].)

Neither the opinion nor the partial concurrence in *Garza v. County of Los Angeles* (9th Cir. 1990) 918 F.2d 763 stands for the proposition that mere awareness of consequences is enough to support a claim of purposeful discrimination. In *Garza*, the district court found that the L.A. County Board of Supervisors, intent on maximizing the probability of their own reelection, "chose fragmentation of the Hispanic voting population as the avenue by which to achieve this self-preservation." (918 F.2d at 771.) "The supervisors intended to create the very discriminatory result that occurred." (*Ibid.*) In his separate opinion, Judge Kozinski noted that "there is no indication that what the district court found to be intentional discrimination was based on any dislike, mistrust, hatred, or bigotry against Hispanics or any other minority group." (*Id.* at 778.) The district court had instead found evidence of a "desire to assure that no supervisorial district would include too much of the burgeoning Hispanic population." (*Ibid.*) Neither opinion in *Garza* is inconsistent with *Feeney*, and neither reduces plaintiffs' burden of proof. At the least, plaintiffs must demonstrate that weakening minority voting power was the deliberately chosen "avenue" for accomplishing some other purpose, such as preserving incumbency.

Evidence Admitted (to support City's position: there is no evidence of intentional discrimination)

72. Ex. 1513 at 2, 5.

[4] Some plaintiffs have attempted "to circumvent this unfavorable precedent by arguing that 'this case is not about "awareness" or "consciousness" of racial information,'" but something else entirely, such as "embracing and relying on such information"; courts have consistently rejected such efforts. (*Spurlock v. Fox* (6th Cir. 2013) 716 F.3d 383, 399; see also *Price v. Austin Ind. Sch. Dist.* (5th Cir. 1991) 945 F.2d 1307, 1319–1320 [rejecting "presumption of discriminatory intent"]; *Clark v. Huntsville City Bd. of Educ.* (11th Cir. 1983) 717 F.2d 525, 528–529 [collecting authorities and reversing where district court had found liability for disparate treatment that was merely "the natural consequence of defendants' failure to follow their policy"].)

73. Ex. 1515 at 5.

74. Ex. 1515 at 5, 29; Tr. 3251:8-11.

75. Ex. 1515 at 5.

76. Ex. 1515 at 29.

77. Tr. 1406:7-14; see also Tr. 995:7-10.

78. Ex. 1515 at 38; Tr. 3241:17-26.

79. Ex. 1322 at 1; Tr. 1506:10-24.

80. Ex. 1346.

81. Tr. 3260:4–3265:2.

82. Tr. 3253:20-23, 3260:4–3265:2, 3266:6-25.

83. Tr. 3261:9–3262:27, 3012:20-28.

84. Tr. 3333:14–3334:4, 3015:1–3017:11.

85. Tr. 3276:6-28.

86. Ex. 1512 at 15 (§ 1101), 25 (§ 1701); Tr. 3322:16–3330:8; see also Tr. 3330:9–3331:17 (collective-bargaining provision in Charter also favorable to minorities).

87. Tr. 3281:11–3283:6.

88. Tr. 3279:16–3280:14.

89. Tr. 3904:14-24.

90. Tr. 3904:5-13, 3941:7–3943:19; see also Tr. 1100:6-9 (assertion about "southern California").

91. Tr. 3284:6-14.

92. Ex. 1300 at 59 (Dr. Kousser's presentation of population trends); Ex. 1816 at 460 (short, neutrally worded article in *Outlook* concerning population growth); Ex. 1801, Ex. 1802, Tr. 3284:16–3289:21 (non-white share of population increased 1.1 percentage points, from 3.4% to 4.5%, from 1940 to 1946).

93. See Tr. 3290:4–3293:2 (no increase in Mexican-born population between 1940 and 1950, and there were few native-born Latinos in Santa Monica at the time); 3271:2-6 (Dr. Lichtman, relying on Ex. 1300 at 59, noting that "even as late as 1960, there are only 5,145 Latinos in the City, a very small percentage, about 6 percent of the total City" population).

94. Ex. 1781 at 61 ("few Californians seemed willing to openly reject the principles of nondiscrimination, equal opportunity, and tolerance. . . . The campaign against Proposition 11 was not premised on a rejection of tolerance per se but on a proposition about what types of authority within a society that had committed itself to tolerance."); Tr. 3294:27–3297:8 ("both sides had used language and appeal and persuasiveness of racial tolerance and racial progress, and each charged the other with racial intolerance").

95. Ex. 1781 at 61; Tr. 3297:9-28.

96. Ex. 1781 at 59 ("the outcome of another proposition on the same ballot demonstrates the challenge of making clear pronouncements about the electorate's judgments about race and racism based on Proposition 11 alone"); *id.* at 61 ("Many factors shaped this particular historical outcome: the exigencies of war and peace, the rising tide of anti-Communism and Cold War politics, the decline of left-oriented unionism, and the actions of a diverse set of political forces").

97. Tr. 3298:16–3299:14; Ex. 1300 (Prop. 15 does not appear in Dr. Kousser's declaration).

98. Tr. 1009:18–1010:16, 1105:15–1106:15.

99. Tr. 3319:7–3320:6.

100. Tr. 3312:19–3316:25.

101. E.g., Ex. 1816 at 442, 447, 477; Tr. 3316:27–3318:17.

102. E.g., Ex. 1816 at 492 (City worker protections); Ex. 1816 at 486 (tax rate under council-manager form of government lower); Tr. 1528:14-18 (Kousser admitting that a "reduction in taxes can be a significant motivation" in voting decisions); Ex. 1816 at 456 (City Attorney); Ex. 1816 at 491 (City Manager); see also Tr. 1557:27-28 (plaintiffs' counsel arguing that the Charter was "multiple, multiple pages of many things. It is not just at-large versus district voting").

103. Tr. 3269:10-17, 3276:26-28.

104. Tr. 3269:18–3276:28.

105. Tr. 3362:7-24.

106. Ex. 1816 at 499, 524 (pro-Charter ads supported by, among others, Rev. Welford Carter, Mrs. Welford Carter, Rev. Alfonso Sanchez, Sr., Mrs. Marcus Tucker, Rabbi Maurice Kleinberg, Ysidro Reyes, Martin Barnes, and Vivian Wilken); Ex. 1206 at 193 (listing members of Interracial Progress

Committee who lent their names to pro-Charter ad); Ex. 1206 at 193, 259 (Rev. Welford Carter, pastor of Calvary Baptist Church, member of the Committee for Interracial Progress, and the most influential African-American leader in the City through the Civil Rights movement); Ex. 1816 at 498, Tr. 3365:18-25 (Mrs. Carter was "an activist in Santa Monica in her own right," and "in 1971 she became the first African-American to serve on the School Board in Santa Monica"); Ex. 1206 at 195, 242 (Vivian L. Wilken, founding member of the Santa Monica branch of the County Supervisors Interracial Progress Committee, and a member of the NAACP); Ex. 1816 at 513 (Frank Barnes was "a fearless civil rights advocate for over 60 years, serving as President of the Southern Area Conference of the NAACP for 10 years" and "co-founded the Fair Housing Council of California"); Ex. 1206 at 241, Tr. 1443:18–1445:6, 1445:14-18 (Martin Goodfriend, founder and president of the Jewish Community Center, President and founder of the Jewish Community Council, and President of the B'Nai B'rith Lodge); Ex. 1816 at 15, Tr. 1447:12-26 (Leo B. Marx, former President and board member of Beth Shalom Temple and President of the Jewish Family Service); Ex. 1817 at 1867, 2085 (Marcus Tucker was first African-American physician to live and work in Santa Monica, and Marcus Tucker, Jr., became a Los Angeles Superior Court judge); Ex. 1817 at 2087 (citing Ysidro Reyes's many "civic, professional, fraternal, religious, and political memberships"); Ex. 1206 at 193 (listing members of Interracial Progress Committee); Tr. 3372:25–3373:19 ("It is inconceivable these members of the Interracial Progress Committee, including the preeminent African-American civil rights leader, including a number of other African Americans and Latinos, would put their name on an ad supporting a charter that allegedly had the effect and intent of discriminating against minorities."); Tr. 3373:20–3374:2 (no evidence Committee members were hostile to the Charter).

107. Closing Br. at 1–2; Tr. 1006:10-17.

108. Tr. 1507:22–1508:9 ("quite close to a smoking gun"); Ex. 28, Ex. 1911, Tr. 3351:18–3352:18 (decrying the "sectionalism" that districts would engender and making no racial appeals); Ex. 29, Tr. 3357:1–3362:5 (similarly condemning the "trading and logrolling" that a districted system would require).

109. Ex. 1315 at 17.

110. Ex. 1816 at 442–444, 477 (articles relaying statements of Freeholders); Tr. 1458:24-28 (Dr.

Kousser noting that his "interpretation is based solely on that document," Ex. 1816 at 477); Ex. 1910, Tr. 3337:5–3338:17 (Dr. Kousser was simply "rewriting . . . what Mrs. Cornett is saying").

111. Ex. 1816 at 443–444, 477; Ex. 1323 ("Barnard told the voters that every authority on City government consulted by the Freeholders had urged the Charter framers not to handicap the council manager form of government by giving Santa Monica seven little ward mayors, each competing against the other."); Tr. 3342:2-4 (Cornett later "denounced the move to districts and said it is a move to disenfranchise the elector by limiting his vote to one council member").

112. Closing Br. at 2, citing Exs. 31, 266.

113. Ex. 1816 at 454 ("Our present government can't be too bad!"); *id.* at 479 (arguing that "Santa Monica has one of the most economical governments in the country. Why change to the unknown?"); *id.* at 459 (likening Charter supporters to communists); Tr. 3635:2-16 (Anti-Charter Committee ad does not refer to or advocate for districts); Tr. 3643:16-26, 3647:27–3650:23 (had Anti-Charter Committee succeeded, City would have maintained status quo, not switched to districts).

114. Ex. 1816 at 470; Tr. 3652:16–3653:23.

115. Tr. 1539:6-13 (Charter proponents affixed their names to ads); Ex. 1816 at 454, 459, 479, 480, Tr. 3654:22–3655:22 (Charter opponents did not affix their names to ads, and the few who identified themselves otherwise were not members of the Interracial Progress Committee).

116. Tr. 3721:27–3723:19 (noting other changes Prop. 3 would have made if passed); Ex. 1368 at 9 (election results).

117. Ex. 1315 at 21.

118. Ex. 1315 at 21–22.

119. Tr. 1580:9-13, 1580:27–1581:2, 1581:9-12, 1582:6-10, 1586:28–1587:4, 1588:2-6.

120. Tr. 1109:20–1110:27, 1588:15-21.

121. Tr. 1110:1-18 (Dr. Kousser testified that he was "reminded of the degree of racial antipathy during the 1970s," when he was "busy with other things," like raising children, writing a book, and securing tenure; see also Tr. 1591:27–1592:16 (he does not mention Santa Monica in his 120-page paper on *Crawford*, and the school district that was at issue in that case, L.A. Unified, is distinct from Santa Monica's school district).

122. Ex. 292 (Dr. Kousser's statistical analysis); Tr. 1114:11-17, 1604:19-27, 1605:15-21, 3680:18–3681:1, 3715:25-28 (Dr. Kousser incorrectly assumed that votes for Beteta and Juarez were a proxy for votes cast by Latinos); Ex. 1808, Tr. 3701:22–3702:21 (little overlap between votes for Beteta and votes for Juarez); Ex. 1811 (stronger correlation between votes for two white candidates than between votes for Beteta and Juarez); Ex. 1811, 3712:20-28 (weaker correlation between voting for Juarez and Beteta and voting for Prop. 3 than between voting for two white candidates and voting for Prop. 3); Tr. 3690:15–3692:24 (regression model generates questionable numbers); Tr. 1601:8–1602:8, 3720:19-27 (Prop. 3 was about far more than districts); Ex. 1315 at 21, Tr. 1114:18-22, Ex. 1206 at 288, Tr. 3255:21–3257:10 (no minorities favored districts); Tr. 3725:5–3726:18 (no evidence that a district would have given Latinos ability to elect candidates of choice); Ex. 1368 at 1 (two minority candidates, Trives and Beteta, won their elections).

123. Tr. 3253:12-16, 3817:25–3818:10.

124. Tr. 1318:23-28, 3818:11–3819:3.

125. Tr. 1319:11-25, 3012:23–3014:4.

126. Tr. 3834:23–3835:5.

127. Ex. 1315 at 1, 17.

128. Ex. 127 at 23–24.

129. Ex. 127 at 24; Tr. 1689:12-17, 1691:20-25, 3802:11-20.

130. Ex. 127 at 27–28, 64.

131. Tr. 3257:16-24.

132. Tr. 968:2-4 (Councilmember Abdo: "I am a strong proponent for finding ways to increase minority representation on the council"); Tr. 986:2-12 (Dr. Kousser noting that councilmembers stated that "they wanted more minorities on the council"); Tr. 1623:5–1625:18 (Dr. Kousser agreeing that councilmembers did not make any explicitly discriminatory statements); see also Tr. 3394:21-25 (plaintiffs' counsel arguing that "We have never said that this is anything about racism. We're talking – in fact, we've said the opposite, with the analogy to the Edelman situation in Gloria Molina. We've said the opposite."); see also Pl. Br. at 18–19 (not arguing theory of racial animus).

133. Tr. 1630:13-16 (Q: "You contend that Mr. Zane had a discriminatory motive based on his desire

to protect his city council seat; right?" Dr. Kousser: "Yes."); see also Tr. 684:14–686:22 (describing *Garza* case); Tr. 962:20–964:11 (trying to draw parallels between this case and *Garza*); Tr. 1741:4-14, 3394:19-25 (plaintiffs' counsel arguing that this case was similar to *Garza*).

134. Tr. 1630:10-18 (Dr. Kousser agreeing that "Mr. Zane had a discriminatory motive based on his desire to protect his city council seat"); Tr. 1630:27–1631:25 (Zane stating at Council hearing that he was not running for reelection; Katz and Olsen likewise did not run for reelection); Tr. 3842:7–3843:4 (explaining implied comparison between Edelman in *Garza* and Zane in this case is inapt because Zane never ran for reelection).

135. Tr. 953:22–958:21.

136. Ex. 1922, Tr. 4220:21–4221:16, 4249:13-17, 4250:19-28 (publicly assisted housing projects scattered throughout City, not just in Pico Neighborhood); Tr. 1067:5-16 (Duron, a sitting member of the Rent Control Board, disagreeing with notion that most affordable housing is in in the Pico Neighborhood); Tr. 3434:22-27, 4220:21–4221:16, 4246:20–4247:4 (O'Day and Davis, sitting councilmembers, making same point); Tr. 4064:20-24 ("Community Corporation has established different housing units all around the City of Santa Monica"); 4245:14–4246:3 (under the City's inclusionary housing rule, a portion of all newly developed housing must be set aside for deed-restricted affordable housing); Tr. 4246:14-19 (rent-controlled units scattered throughout the City, not just in Pico Neighborhood).

137. Tr. 992:26–994:2.

138. Ex. 127 at 48; Tr. 3846:1–3847:8.

139. Tr. 939:14-26 (Holbrook favored districts); Tr. 1678:16–1679:24 (Holbrook claimed he would win under a districted system, too); Ex. 272, Tr. 3849:13–3850:19 (point estimate of Latino support for district advocate Holbrook in 1994: -108.9%); Ex. 275, Tr. 3851:28–3852:2 (point estimate of Latino support for district opponent Olsen in 1996: 106.4%).

140. E.g., Tr. 187:21-25, 1667:9-13 (Maria Loya); Ex. 1694, Tr. 191:8-28, 1667:14-28 (Jose Escarce, Maria Leon-Vazquez, Ana Jara, and Douglas Willis); Ex. 1697 at 4, Tr. 1659:18–1660:4 (Tony Vazquez); Ex. 1679 at 6, Tr. 1661:16-19 (Margaret Quinones-Perez); Ex. 1682, Ex. 1711, Tr. 2495:23-28 (Barry Snell, Oscar de la Torre); Tr. 1048:15-18 (Duron); see also Tr. 4039:14-26 (Jara encouraged to run for School Board by Patricia Hoffman, co-chair of SMRR).

141. E.g., Tr. 189:8-15 (Loya); Ex. 1817 at 1588, Tr. 1685:11-15 (Willis).

142. Tr. 1660:3-9 (Vazquez); Ex. 1678, Ex. 1679 at 2, Ex. 1686 at 1, Tr. 1661:7-14, 1665:9-13, 1665:27–1667:8 (Ken Genser); 1661:26–1662:7 (Willis); Ex. 1682 at 2, 1670:11-20 (de la Torre); Ex. 1679 at 3, 1662:8-26 (repudiating Herb Katz, who opposed districts).

143. Ex. 1686 at 2 (Greenstein co-chair of SMRR); Tr. 1665:21–1666:10 (Greenstein also chair of Charter Review Commission, which recommended moving away from at-large system).

144. Tr. 1681:12-20 (Dr. Kousser did no analysis to show that districts would have increased Latino voting strength in 1992); Tr. 3752:4-11 (Dr. Lichtman stating that no district could have done so).

145. Tr. 3752:12-19, 3794:23–3795:8, 3796:20–3797:15, 3801:2-25 (districts would have had adverse effect on African-Americans and Asians); Tr. 3800:17-23 (Dr. Kousser did not analyze the impact of districts on African-Americans or Asians in Santa Monica); Tr. 3752:20-26 (Vazquez, a Latino, was already sitting on the City Council in 1992); Tr. 3752:27-3753:4 (Asha Greenberg, an Asian-American, was also elected to the City Council in 1992); Tr. 3783:6-18, 3803:16–3804:12 (Latino registered-voter population was too small for a district or alternative at-large system to have been effective); Tr. 3790:17–3794:8 (Latinos would not have been able to win in any district, and Latinos outside the district would have been submerged in overwhelmingly non-Latino districts).

146. Tr. 3817:25–3818:22 (election timing); Ex. 1816 at 86–87, Tr. 3819:22–3821:25 (ban on discrimination in clubs); Ex. 1816 at 96, 3821:27–3822:11, 3433:19-25, 4220:3-7, 4245:14-21 (affordable-housing requirements).

147. Tr. 32823:3–3824:10 (describing Prop. J in 1988); Ex. 1381 at 4 (Vazquez elected); see also Tr. 1716:9–1717:5, 3802:1-10 (Greenberg, an Asian-American, elected in 1992).

148. Tr. 991:6-26; see also 3834:23–3835:5 (Dr. Lichtman identified no departures either).

149. Ex. 127 at 45–46 (too few to prevail, less influence; lack of African-American and Latino cohesion); *id.* at 25 (insufficiently concentrated); *id.* at 25, 45–47, Tr. 1699:6-23, 3832:16–3833:10 (loss of influence over most councilmembers, parochialism); Ex. 127 at 25, Tr. 1701:18-24 (elections less frequent).

150. Ex. 127 at 52.

151. E.g., Closing Br. at 1, 17; Tr. 959:5-11.

152. Ex. 1387 at 5 (64.14% of voters voted against Measure HH, which called for districts).

153. Tr. 1116:4–1117:28, 1718:10-22.

154. Tr. 1719:6–1720:24, 3872:10-24.

155. Tr. 1315:24–1316:7, 1317:6–1318:22, 3015:2-24, 3016:4-13, 3017:4-11 (plaintiffs' experts conceding that the current system has none of these dilutive features).

156. Ex. 1915 (summary of key opinions on lack of discriminatory intent in 1946); Tr. 3661:4-16 (Dr. Kousser found no evidence of discriminatory intent in the adoption of an election system in 1914 that was at least arguably unfavorable to minorities, but did find such evidence when the potentially discriminatory features of that system were abandoned).

(IF PLAINTIFFS HAVE FAILED TO PROVE INTENTIONAL DISCRIMINATION, THEN QUESTION II-B ABOVE SHOULD BE ANSWERED NO, AND JUDGMENT ON PLAINTIFFS' EQUAL PROTECTION CLAIM SHOULD BE ENTERED IN FAVOR OF THE CITY OF SANTA MONICA.)

III. Remedy in the event the court finds liability

(IF THE COURT ENTERS JUDGMENT IN FAVOR OF THE PLAINTIFFS ON EITHER OF THEIR CAUSES OF ACTION, IT SHOULD SET A DEADLINE BY WHICH SANTA MONICA, WHICH IS A CHARTER CITY, MUST PROPOSE A REMEDY FOR ITS REVIEW.)

PROOF OF SERVICE

I, Cynthia Britt, declare:

I am employed in the County of Los Angeles, State of California. My business address is 333 South Grand Avenue, Los Angeles, California 90071. I am over the age of eighteen years and not a party to the action in which this service is made.

On January 18, 2019, I served

DEFENDANT CITY OF SANTA MONICA'S OBJECTIONS TO PLAINTIFFS' PROPOSED STATEMENT OF DECISION

on the interested parties in this action by causing the service delivery of the above document as follows:

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☑ **BY MAIL**: I placed a true copy in a sealed envelope addressed as indicated above, on the above-mentioned date. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

☑ **BY ELECTRONIC SERVICE**: I also caused the documents to be emailed to the persons at the electronic service addresses listed above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 18, 2019, in Los Angeles, California.

Cynthia Britt